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FEATURE SECTIONS

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PUBLIC UTILITIES FORTNIGHTLY . . stands for Federal and state regulation of both privately owned and operated utilities and publicly owned and operated utilities, on a fair and nondiscriminatory basis; for nondiscriminatory administration of laws; for equitable and nondiscriminatory taxation; and, in general—for the perpetuation of the free enterprise system. It is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.

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Pages with the Editors

IT is a common view among American businessmen that no product is overpriced as long as the public is ready, willing, and able to buy it. The converse of this statement, which is merely another way of suggesting the economic policy of "what the traffic will bear," is that the public will stop buying when prices have risen to a point where the public feels it is no longer receiving value.

BUT the problem of stabilizing supply and demand through such price adjustment does not always work so simply. When a backlog of demand has built up over a period of time because of an interruption of supplies, such as the shutdown in the manufacture of utility appliances during the war, the customer can be sold readily enough at higher prices. But *keeping* him sold, and keeping him happy about his purchase, may require some expert salesmanship. Even in the regulated field of public utility service, we find such economic complications arising from artificial influences on the normal free interplay of supply and demand. Gas, electric, and telephone utility companies certainly do not want for customers today. Nor can it be generally contended that the value of such service has been overpriced.

JOHN P. CALLAHAN

INDEED, until recently the trend in utility rates generally has been steadily downward. But with the improvement in the service supply situation which is bound to materialize as our great utility industries make progress with their vast plant expansion programs, there will come a time when supply will catch up with the demand, and then the utility industries will be faced with the somewhat unusual problem of keeping their customers "sold" on the value of the service — but at rates which will yield revenue sufficient to offset rising operating costs. That is the salesmanship job which faces all utility industries within the predictable future.

HIGH utility rates seem inevitable under present general inflationary conditions. Already the telephone and transit industries have had to move boldly for substantial increases in rates. Even the gas and electric companies, despite their vast capacity for absorbing increased costs through expansion of sales volume, are reaching their economic limits.

AND so, while a sales organization might offhand seem a matter of secondary importance for a utility industry straining every fiber to catch up with customer demand, it must be kept in mind that first-rate sales organizations do not spring up over night in full bloom. Even if the suggested demand for salesmanship were two years away, it would not be too early today to begin the task of recruiting and training a qualified organization for the task that is to come.

LARSTON D. FARRAR

IN this issue we present a careful analysis of this situation from the standpoint of a well-known figure in the electric power industry who is well qualified to speak. He is S. B. WILLIAMS, now vice president of Sylvania Electric Products, Inc., of New York, but who will be readily recalled by many readers for his considerable period of service as editor of one of our esteemed contemporaries in the industrial publication field. MR. WILLIAMS was born in Kansas in 1889, educated at Princeton (B Lit, '12; EE, '14). He joined the *Electrical World* as assistant editor in 1914, and after other editorial experience with affiliated McGraw-Hill publications he became managing editor of *Electrical World* in 1936 and editor the following year. He resigned that post to join his present organization. In addition to his editing activities, MR. WILLIAMS also has been active in associations of electrical engineers. His article in this issue contains in substance the paper delivered by him at the sales conference of the Southeastern Electric Exchange in Atlanta, Georgia, last October.

* * * *

THE Federal law requiring the registration of lobbyists has been in effect only a little over a year. During that time hundreds of professional "legislative agents" and other representatives of special interests have felt themselves required by law to register at least a statement of their activities. Others in Washington who seem to be engaged in about the same type of activity apparently have not felt so required. This is certainly true of some Federal government officials who make no bones about their activity in seeking to influence congressional legislation. Whether such activity is always exempt as action in line of duty is another open question frequently raised around Washington these days. In this issue, LARSTON D. FARRAR, author of numerous articles on business from the Washington standpoint, gives us an interesting check-up on how the new lobby law is working out—or not working out, according to the way the reader may care to view the situation.

* * * *

JOHN P. CALLAHAN, author of the article on the sinking-fund provision for utility preferred issues, is the utility news reporter and financial analyst of *The New York Times*.

* * * *

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

THE Idaho commission, in passing upon an application for telephone rate increase, considers the classification of exchanges of a statewide telephone company. (See page 33.)

WHETHER a public utility company should be authorized to serve within the franchise area of a rural electric cooperative association is considered by the Indiana commission. (See page 45.)

A TELEPHONE company was ordered to resume service to a subscriber whom it had served for many years, where service had been discontinued unjustifiably at the request of the police. (See page 63.)

THE next number of this magazine will be out January 29th.

The Editors

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A boon to typists, Keyboard Margin Control—exclusive on the Remington KMC* Typewriter—takes the merest flick of a finger, gives on the dot margin accuracy without moving the fingers from the keyboard. Like the other features on the Remington KMC Typewriter, it is designed to ease and speed the typists' work. These features mean extra savings for executives and owners, too. Keyboard Margin Control and the other Plus Values built into this magnificent typewriter—all available without extra charge—provide distinctive, clearcut, efficient typing at the lowest net cost. Let your nearby Remington Rand representative show you how the replacement of your outdated machines with Remington KMC Typewriters can lower your typing costs.

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"PUBLIC UTILITIES AND CITY PLANNING"

Helping to plan the city of tomorrow is both a duty and a responsibility of gas, electric, telephone, water, and transit utilities. Here is a down-to-earth article by Leslie Williams, New York city planning and traffic engineer, on how public utility executives may best meet this challenge and opportunity.

"SHOULD PUBLIC UTILITIES ADVERTISE?"

Harold S. Metcalfe, president of the Public Utilities Advertising Association, gives us plenty of good reasons for advertising by operating utilities. The need for such an efficient sales aid is even more necessary for an operating utility, notwithstanding its service monopoly position, than for the sale of products by manufacturers in a competitive market.

"UTILITY CUSTOMERS ARE PEOPLE—TALK TO THEM"

Public relations of a great utility organization has many facets and aspects. One rarely noticed method of making friends with the utility customer is the ordinary routine letter to the customer. C. L. Sullivan of Peoples Gas Light & Coke Company of Chicago has made an interesting study of this problem. His article summarizes the result.

"THE PLIGHT OF LABOR UNDER TOTALITARIANISM"

The myth of totalitarian efficiency in the handling of labor relations has been pretty well exploded by a comparison of living standards for average workers here and abroad. William B. Smith, former U. S. Labor Department official, strips this myth quite bare with an analysis of what totalitarian rule really means to the workingman, including the utility worker.

And . . . ***Special financial news, digests, and interpretations of court and commission decisions, general news happenings, review, Washington gossip, and other features of interest to public utility regulators, companies, executives, employees, investors, and others.***

Remarkable Remarks

"THERE NEVER WAS IN THE WORLD TWO OPINIONS ALIKE."—*Montaigne*

FRANK W. RISING
General manager, Automotive & Aviation Parts Manufacturers, Inc.

"Economics, not politics, should form the basis of labor relations."

SIR STAFFORD CRIPPS
The Chancellor of the Exchequer.

"Britain is on the move, and we can face next year [1948] with quiet confidence."

JAMES J. DAVIS
The late U. S. Senator from Pennsylvania.

"The time to quit work and divide the wealth is just two weeks before the end of the world."

KEITH S. MCHUGH
Vice president, American Telephone and Telegraph Company.

". . . public relations and industrial relations officials should work together closely and at top management level."

HOLGAR J. JOHNSON
President, Institute of Life Insurance.

"No business can make a decision that is not in the public interest and sell it to the public as being in their interest."

FRANK W. PIERCE
Director, Standard Oil Company (New Jersey).

"American business and industry can do more than any other institution in steady progress toward security and steady jobs for us all."

HENRY E. ABT
President, Brand Names Foundation, Inc.

"True strength in our world leadership is impossible unless we are strong at home. And we can't be strong at home unless we understand what we are strong for."

HENRY WALLACE
Editor, The New Republic.

"I refuse to condone the obstinacy of others, but I maintain that the wealthiest and most powerful nation in the world can afford patience and tolerance in a time of crisis."

FRED A. HARTLEY, JR.
U. S. Representative from New Jersey.

"The Taft-Hartley law attempts to prohibit mass picketing and the use of violence. I want to make it possible for anyone to go to work, free from harm to himself or family."

JAMES L. DONNELLY
Executive vice president, Illinois Manufacturers' Association.

"Politics means expediency. Whenever the government takes over, politics and expediency are sure to prevail. Politics, expediency, and sound economy simply do not mix. It is just like trying to mix oil and water."

PAUL G. HOFFMAN
Chairman, Committee for Economic Development.

". . . we are convinced that this economy of ours can achieve a combination of progressively higher living standards, relative stability, and freedom of choice which will make it by far the most desirable type of economy in the world."

HARRY M. NORDBERG
Sales manager, Pitney-Bowes, Inc.

"A courageous management use of the findings of market research can do much to help minimize business recessions of the future and thus contribute directly to a stabilization of the dynamic economic system we call free enterprise."

EMIL SCHRAM
President, New York Stock Exchange.

"There is a great deals of loose talk these days about speculation. Risk taking, which contributes to the liquidity of markets and to the ability of our securities markets to supply capital, is constructive and should be encouraged. Speculation is inherent in our capitalistic economy."

JOHN C. FOLGER
Chairman, Investment Bankers Association Conference Committee.

"Private enterprise is the only thing under God's heaven that has been vindicated; everything else in its line has been proved a flop. Private business is the power behind a nation which is just about holding the world together singlehandedly, despite some nipping at its heels here and there."

NEIL W. CHAMBERLAIN
Assistant professor of economics, Yale University.

"Union power must be held within bounds; no group power in our society can be recognized as above or beyond the law. Restrictions upon undesirable practices are not only warranted but necessary. Perhaps some contained in the new law will prove their worth—only time will tell. But restrictions alone do not constitute a sufficient recognition of power; limitations on power do not necessarily canalize power."

JAMES B. CONANT
President, Harvard University.

"As never before business needs men who appreciate the responsibilities of business to itself and to that unique society of freemen which has been developed on this continent. Such men must understand not only the practical workings of business organizations but also the economic and social climate in which business operates. Management and labor share with the statesmen whom we elect to office the responsibility for our future."

ROSWELL MAGILL
Partner, Cravath, Swaine & Moore.

"We certainly have our own domestic problems to consider, as well as the world's. We are one of the few remaining countries in which a free private enterprise system persists. Our domestic health, as well as our aid to foreign countries, depends entirely upon the vigor and vitality of that productive system. We must continue to produce and produce mightily, for it is goods and not merely dollars that are in great demand today."

Imagine *doing an analysis job* with not 6 . . . but 300 hands!

THAT'S what happens in our Bill Frequency Analyzer which is one of the most remarkable machines you ever saw. It is an electro-mechanical device with 300 registers which automatically classify and accumulate—*all in one step!*

150,000 to 200,000

This mechanical marvel is exclusive with us and of especial interest to you for the speed and ease with which the machines compile bill analyses.

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Utilities Almanack

JANUARY

15	Th	¶ *Eighth International Heating and Ventilation Exposition will be held, New York, N. Y., Feb. 2-6, 1948.*
16	F	¶ *NRDGA ends annual convention, New York, N. Y., 1948.*
17	Sa	¶ *Public Utilities Advertising Association will hold New England regional meeting, Boston, Mass., Feb. 4, 5, 1948.*
18	S	¶ *Canadian Electrical Association ends winter conference, Quebec, Canada, 1948.*
19	M	¶ *Georgia Association of Broadcasters begins winter meeting, Augusta, Ga., 1948.*
20	Tu	¶ *American Water Works Association, New York Section, holds mid-winter luncheon, New York, N. Y., 1948.*
21	W	¶ *American Gas Association, Home Service Committee, begins meeting, Chicago, Ill., 1948.*
22	Th	¶ *Texas Telephone Association will hold convention, Galveston, Tex., Mar. 15–17, 1948.*
23	F	¶ *New England Gas Association will hold annual meeting, Boston, Mass., Mar. 18, 19, 1948.*
24	Sa	¶ *American Society of Civil Engineers ends annual meeting, New York, N. Y., 1948.*
25	S	¶ *Canadian Construction Association begins annual meeting, Quebec, Canada, 1948.*
26	M	¶ *American Institute of Electrical Engineers begins winter general meeting, Pittsburgh, Pa., 1948.*
27	Tu	¶ *National Association of Broadcasters Program Executive Committee ends meeting, Washington, D. C., 1948.*
28	W	¶ *Minnesota Telephone Association ends convention, St. Paul, Minn., 1948.*

Reflections of Power
(Conners creek power plant)

Courtesy, Detroit Edison Company

Public Utilities

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Need for Selling Service To the Public

It may come as a surprise that the electric utility industry, faced as it is today with the problem of meeting the demand for service with its available capacity of supply, may face even a larger problem of selling service to keep the industry operating profitably in the years just ahead. The answer lies in the need for a more effective and discriminating type of sales promotion which will be required to make the utility plant earn more dollars per unit of capacity. Here is a timely explanation of why it is necessary for utility companies to recognize the urgency of such sales organizations now so that they will be available with proper training and support when the period for more effective sales promotion arrives.

BY S. B. WILLIAMS*

RIGHT now when capacity reserves are at their lowest nothing probably seems less necessary to electric utility companies than a sales department. Doubtless other forms of public utility industry have the same reaction in the face of mounting demand and tight service supply. Many a manufacturer felt that same way a year ago when back orders were stacked up to the ceiling and every mail added to the confusion.

Except for some heavy equipment lines, these same manufacturers are bending every effort to strengthen their sales departments. They have the same problem now that the electric utilities are going to have before long—a larger productive capacity and a larger number of people to keep employed, and the only way it can be done is by *profitably selling the output.*

*For personal note, see "Pages with the Editors."

The privately owned power companies are now committed to the installation in the next five years of some 15,000,000 kilowatts or an increase of 37½ per cent.

The present 40,000,000 kilowatts of private capacity represent an investment of $13,000,000,000, while this 5-year program calls for an additional $7,000,000,000—an increase of over 37½ per cent in capacity but over 50 per cent in investment.

I MENTION these figures for two reasons:

First, because the industry's sales problem has changed in magnitude and importance the same as has the manufacturers'. It is not only bigger in volume than ever before but with it go responsibilities that are of a different kind and magnitude.

Second, this new capacity is going to catch up on the industry's sales force faster than may be realized. In fact, as far back as August, 1947, new capacity began to exceed load growth and the industry as a whole was once more beginning to accumulate reserves. Of course, it is slow at the present time but it is gaining in momentum.

Management right now is concerned about the financing of this $7,000,000,000 of new investment. For years new investment has been financed out of reserves but these are inadequate to the needs of this new program. Management might well be concerned about getting an adequate return on this new investment.

There will still be engineering and operating problems, legal matters to be solved, and tax problems to be handled, but the big job that is directly ahead of the private electric utilities is sales.

IT has taken the industry sixty-five years to sell 40,000,000 kilowatts. It now faces the task of selling 15,000,000 kilowatts in five years. Such is the magnitude of the job which management must place upon company sales organizations.

But that is not all. The 40,000,000 kilowatts now in operation are on the books at $13,000,000,000. Last year the industry's gross operating revenue of something over $3,000,000,000 was sufficient to net for dividends and surplus about 5 per cent on investment or $15.90 per kilowatt.

At the same rate of equity return, the new investment would require a net of $23.33 per kilowatt. That is $7.43 more net per kilowatt than last year.

We must assume that the industry is at least going to maintain its equity return, if not improve it. How else can it expect to raise the equity capital necessary to finance this additional $7,000,000,000 of investment?

If that is so, where is the extra $7.43 per kilowatt coming from? That is the $64 question which utility sales organizations must answer.

Higher rates undoubtedly will be part of the answer but in general the higher revenue will come as a result of much more careful planning of load acquisition. Selective selling, once pretty much a slogan, now must become an actuality.

In fact, with same average rates as last year the nation's electric utility industry will have to sell an additional 7,500,000,000 kilowatt hours annually just to take care of the higher equity return requirement. This is over and above the 65,000,000,000 to 70,000,000,000 kilowatt hours necessary to load up to new capacity.

THESE figures are merely minimums. If it is the intention of the industry to utilize this added capacity in part to provide substantially larger reserves, then the revenue burden for each kilowatt sold is just so much more.

It is enough at this time perhaps to limit our thinking and planning for the five years immediately ahead of us. That, however, is but the beginning. America needs this power and much, much more besides. If twenty more years are spared us before we are engaged in another war, the closer we are to twice or even three times the power now available the better will we be able to defend ourselves against any aggressor.

Adequate power is the first line of defense of any major country. I hate to think where the Allies would have been in this last war had the United States had as little power per capita as her Allies did.

We must provide for the power needs of national defense now, not in terms of unused plant but of operating capacity that can be available as required. Either we will do that or the armed forces will erect new plant. Such a program might start out as a limited national security precaution. But it might not stay in such a category.

For sometime now, the utility companies here have borne a heavy responsibility for helping to stem the tide of rising prices through improved productivity resulting from a more generous application of electric power to industrial processes. That is now going on and in considerable measure is causing the industry's present temporary capacity embarrassment. The responsibility will continue to go on just as long as the industry can contribute to lower costs.

To sell all this load is not going to be too difficult, if the industry is resolved to hustle for sales. The tough problem is going to be to sell it for more money *without relying very much on higher rates!*

INVENTORS, designers, and engineers gave the electrical industry its start. As it expanded and consolidated, financing became a major problem and the industry turned to the bankers for direction. When legislation and regulation were of absorbing importance, lawyers in many instances became pilots. Tomorrow, for the first time in the history of the industry, markets will be the dominant problem. Tomorrow is the day of the utility sales promotion.

There is no choice; the industry's sales organizations must accept this challenge. Of course, there is always the possibility the company personnel

¶ "INVENTORS, *designers, and engineers gave the electrical industry its start. As it expanded and consolidated, financing became a major problem and the industry turned to the bankers for direction. When legislation and regulation were of absorbing importance, lawyers in many instances became pilots. Tomorrow, for the first time in the history of the industry, markets will be the dominant problem. Tomorrow is the day of the utility sales promotion.*"

might undergo some adjustment until men of the necessary degree of initiative and vision are found or developed. The job of directing utility sales in the future will be a big job and will require men who can measure up to it.

While building load is of primary importance, there are related phases of the task which need conscious attention in order to bring forth a balanced and efficient operation.

There can be no debate over the need for load that will bring an adequate return for the investor. Whether this is best secured by widespread sales regardless of location or character or by emphasizing the sales of selected loads has been a moot question. I know that manufacturers and others are more conscious now of the necessity for pushing harder on the long profit items to overcome shrinking differentials on run-of-mill products. Utilities may be different but, if the new capacity is not going to obtain from the regulatory commissions a higher rate to offset the higher investment cost, *then something has got to be done to get more revenue out of a kilowatt.*

IMMEDIATELY available in this connection is planned lighting. There is probably no other load that offers so much in terms of dollars per kilowatt as lighting. Moreover no other major load has been so neglected in terms of its potential. It may come somewhat as a shock to many but the fact is that most of the lighting in this country has been allowed to become obsolete.

The planned lighting program launched last year can provide a considerable part of the profitable load needed to carry this new investment—that is if it is properly carried out locally. Some of us who have been greatly interested in the program are wondering if it will become just another utility promotion, that the rest of the industry will not be tied in sufficiently, that not enough money will be budgeted locally to insure the realization of anything like the potential.

Some utilities are putting off this and all other promotions because they are so short of capacity. I cannot believe that such decisions are made by company officials responsible for sales effort, for surely they must know that sales do not start the moment plans are begun. If any lesson is to be learned by the utility industry from the experience of manufacturers thus: It is already late. Whenever capacity to produce is growing faster than orders received, it is time to break out the danger signal. It takes time to build up sales momentum. By starting now, the industry can catch up with capacity growth in time to prevent a considerable investment return loss when the capacity goes in.

During this period of limited capacity the utility sales officials have the important job of keeping the customer or prospect happy. Some manufacturers took advantage of the sellers' market either to put on a bit of pressure or to ignore certain customers. When the buyers' market returns, and it always does, these suppliers may have a lot of fence mending to do.

IN times of difficulty it is still possible to create good customer relations even though it is not possible to satisfy all the customers' requirements. Such relations will pay off handsomely when there is plenty of capacity.

With such a large sales task it is necessary that the right atmosphere be

Scientific Marketing

"SCIENTIFIC *marketing requires the right personnel—men who have been carefully selected and trained. Such men, of course, cannot be paid on the how-little-can-I-get-salesmen-for basis that has characterized so many programs. It must take the opposite approach of how-much-can-I-afford-to-pay. The results will be better and the customer relations will not suffer as much.*"

created. This is not a job that the sales organizations can leave to someone else. Good relations with anyone that can affect business are essential. Obviously this is true of customer relations. It is equally true of public relations. The community in which the utility operates can be resistant or receptive to a sales program. It is a responsibility of the sales organizations to see that the latter condition prevails.

In the years ahead of us, industry will be arrayed against industry fighting to keep its plants and employees busy. Is the electrical industry going to be disorganized? That will depend entirely upon the type of leadership that the utility shows. The manufacturers, wholesalers, contractors, and dealers can help tremendously to meet the sales challenge. However, the utility companies' own sales officials are the captains of the local industry. The sales pace they set is more likely than not to characterize the whole tempo of the market in any given area. The prewar load-building pace is not fast enough to absorb the capacity of the suppliers. It needs something bigger; new thinking, new approaches, new programs, new methods. If methods used before the war are inadequate to the problem perhaps the time is here when utilities can accept the sales principles of competitive business. For instance, there is the selling of selected markets. We will hear more about this as a general business philosophy; namely, that we can provide mass employment and mass production only by mass selling. Planned lighting when properly carried out is one kind of mass selling.

IT is nothing new to design sales for the purpose of stimulating business. But consider now, a method used by industry depending on mass selling—what price (rate) will get a predetermined volume of business? Before that can be done, of course, we must ascer-

tain by research what is the relation of price to sales.

Pricing to bring a return is all right when sales do not need stimulation. On the other hand, pricing to get sales, if carefully done, will in all probability bring the desired return.

It has been found a good practice, in unregulated business, to learn what the customer wants by way of product, price, and service. Should the sales department be satisfied to accept the engineers' concept of service? Or is something else less costly just as salable?

When a market is new, the fastest progress is made by taking off the cream. But sooner or later an intensive search for business is necessary. Area development in an intensive manner, particularly on selected loads, will be found to aggregate large results.

Another page from the book of nonregulated competitive business that will bear study is a clear and courageous analysis of existing competition. How much has other existing investment been a deterrent to the strong promotion of electric service? Maybe it has to be accepted, but then again maybe if all the facts were known a change in policy would be granted.

THERE is no question about the competition to the electric utility from other services such as isolated plants. Sales officials generally know what to do about this and they are persistent as bulldogs. But, let us apply the same reasoning to the competition that arises from *inertia*—business lost because the sales department just did not go after it.

In competition, one cannot overlook any business. If he does his competition will get it. This is one of the greatest sources of utility business—the uncultivated loads—the loads nobody seems to go after—the loads that are barred because of sales inertia.

To accomplish these tasks, there are modern methods which form a new concept of selling; namely, marketing.

What are the loads the utility is losing by inertia? What is the right price? How big is the market for any one load, etc.? Modern practice is to get the facts through *scientific market research*. No smart producer would think of starting a new campaign, of bringing out a brand new device, or of entering a new market without first finding out what he would encounter. This research and marketing testing might slow him up a bit at the start. But, in the long run, he would be further ahead because he would know what he was doing and why. He would be less likely to make a costly mistake.

SCIENTIFIC marketing requires the right personnel—men who have been carefully selected and trained. Such men, of course, cannot be paid on the how-little-can-I-get-salesmen-for basis that has characterized so many programs. It must take the opposite approach of how-much-can-I-afford-to-pay. The results will be better and the customer relations will not suffer as much.

It is not enough to select and train. These people must have intelligent direction and a program of retraining at regular intervals. Too many promising fellows have fallen by the wayside because direction was poor or no attempt was made to keep them up to date.

Finally, the approach to this market must include a new concept of sales cost. There is no room in tomorrow's

budget for waste. Efficiency is necessary. At the same time, there is no room for economy where economy is at the expense of production.

In setting up a budget, the organization psychology should be based on how-much-can-I-afford-to-spend-to-get-this-business. It is always going to be possible to show a low dollar per year cost for getting some new load. But that should not be the criterion by which effectiveness is measured. If that low dollar cost was at the expense of a much larger volume that could have been secured with a more liberal expenditure, then there is always the question as to which was the better way in terms of the company's needs.

For instance, this new capacity that is ahead of us has a certain investment overhead charge. How much can you afford to spend to get business to minimize this loss? Would the savings of a few dollars in sales cost be warranted when, at a greater cost, load could be had faster?

Utilities are going to need much more realistic sales budgets than they have had in the past.

"THE New York City Omnibus Corporation, which, like other bus companies in New York, has been wondering how long it can continue operating on the 5-cent fare, has had a study made of transit fares in the United States in cities of 100,000 population and over. This survey, by Simpson & Curtin, transportation engineers, brings to light some interesting facts. Every city in the United States except New York (these generalizations all relate to cities of 100,000 or more) has had a fare increase since the First World War. New York city has the only municipally operated transit system charging less than 10 cents, and it is the only city running its own transit that has not raised fares in the last two years. Our 5-cent fare was established in the horse-car days of 1853. Reading, Pennsylvania, comes closest to us in this dubious claim on history, with a fare of 7 cents that hasn't changed since 1918.

"Of the 91 cities, 70 per cent, or 64 of 91, charge 10 cents for a single cash ride. Many sell tokens for a reduced rate, however, or have weekly passes. Two cities charge more than 10 cents, with Chicago making the top charge on rapid transit lines. Fares have risen in the last two years in 41 of the 91 cities, and some cities have had two fare rises in that time. Except for New York, the only city in the country of 500,000 or more population that has a charge of less than 10 cents is New Orleans, where the straight cash fare is 7 cents.

"These figures, of course, provide further evidence of New York city's folly in keeping the horse-car nickel fare when it had long since outlived its ability to pay for the ride on city-operated transit. Neither can we expect the private bus lines, paying taxes, franchise charges, and meeting an increasingly heavy burden of labor and equipment costs, to remain going concerns under the 5-cent fare."

—EDITORIAL STATEMENT,
The New York Times.

Sinking-fund Provision for Utility Preferred Issues

The recent offering of the Appalachian Electric Power Company of a preferred stock issue carrying the security of the sinking-fund provision has aroused widespread interest in financial and utility circles. The possibility that stockholder apathy might be dissolved through the initiation of sinking-fund provisions in utility preferred issues is suggested.

By JOHN P. CALLAHAN*

FACED with a financing problem unparalleled in the 60-year history of the industry, utility companies are beginning to realize that the bulk of the $5,000,000,000 needed during the next five years for unprecedented expansion will not be obtained by efforts to float 4 and 3 per cent preferred stock issues. The rather dismal record of such unsuccessful attempts during the past several months clearly indicates that the potential investor must be offered a more attractive security.

In a discussion of this problem late last year, several seasoned observers in the investment houses of Wall Street and managers of life insurance company portfolios advanced ideas that seem certain of advantageous adoption by future utility issuers of new money securities.

The most widely discussed item was the inclusion of a sinking-fund provision in the proposed preferred stock offering, 75,000 shares, of the Appalachian Electric Power Company. The stock will carry an annual sinking-fund provision of 2 per cent.

The second suggestion that was popular in discussion of the utility financing problem was the advantage that long-term bond issues have over utility preferred stocks. Speaking for the life insurance companies, managers of utility investments there said that the unincorporated institutional investors, as exemplified by their companies, do not have the tax advantage available to the corporate investor, such as the fire insurance company. The latter enjoys an 85 per cent tax

*For personal note, see "Pages with the Editors."

credit on purchase of preferred, paying only 40 per cent tax on the remaining 15 per cent of the stock purchased. The life insurance company, however, does not have that tax advantage. Further, it also has to carry preferred stocks on its books at the current market value, while bonds are amortized.

Pointing up this disadvantage, insurance company men cited, as an example, the 3½ per cent preferred stock of the Public Service Company of Indiana, which came to market at par in April, 1946, now is bid about 80. Similarly, the Central Maine Power Company 3½ per cent preferred stock, priced at 101½ when it was floated in May, 1946, with a yield of 3.45, now is bid 80 to 81½.

A third point of discussion was the alternative of a bank loan, even though it might cost a fraction of a point more than the interest rate on current preferred stock offerings. Earnings of most utility companies are high, thus making it possible to consummate short-term borrowings from banks, in lieu of poorly received senior stock issues that "would drag the financial resources of a company indefinitely," observers remarked.

A CLEAR indication of the dearth of activity among preferred stock purchasers is the fact that no utility stock issue was sold directly to the public in the local market during November, 1947. This was the first month since October, 1946, in which no utility stock issue was sold directly to the public in the New York market. And many of the issues that have been marketed were involved in exchange offers.

An awareness of the problem that confronts utility issuers of preferred stocks was discussed last July by Richard B. McEntire, a member of the Securities and Exchange Commission, before the National Association of Railroad and Utilities Commissioners that met in Boston.

At that time Mr. McEntire said it was "quite possible that many a utility company which now considers preferred stock issues as an important source of financing its construction program will be required to reappraise its availability as compared with other media of financing. A number of industrial preferreds which have been sold recently have had sinking funds and it is not at all improbable that pressure from institutional investors will require utility preferreds to contain this provision."

Concerning the possible "pressure from institutional investors," it is highly probable that much consideration will be given to the "weight" of life insurance companies by utility companies in the light of the fact that utility stock issues are substantially represented in their portfolios.

THE legal reserve life insurance companies, which represent more than four-fifths of the total assets of *all* insurance companies, show the distribution of holdings as of December 31, 1946. See table, page 78.

Looking at the situation from a somewhat different approach, it would appear that all institutions (including life insurance companies as well as banks, trusts, foundations, etc.) now own about 85 to 90 per cent of all utility funds but less than one-quarter of preferred stock and less than one-

	Billions of Dollars	*Percentages*
Mortgages	$ 6	14
Government bonds	21	49
Railroad securities	3	6
Public utility securities	5	13
Other securities	4	9
Cash, etc.	4	9
Totals	$43	100

tenth of the common stock of the various utility companies.[1]

Of the legal reserve life insurance companies in the country, 49, or 12.7 per cent of them, represent 90 per cent of the total assets of all life insurance companies. At the end of 1946, they had $48,000,000,000 of assets, of which 46 per cent was invested in government securities, and 13.7 per cent was invested in utility securities. Investments in industrial, rail, and other types of securities ran well below the amount represented by utilities.

Emphasizing the magnitude of life insurance companies' investments in the utility industry, all such companies, with total admitted assets of $51,500,000,000 at the end of 1947, had an investment of $7,375,000,000 in public utility bonds and stocks. The next larger investment was U. S. government securities, at $20,225,000,000. Railroad security holdings of the life insurance companies on December 31, 1947, were $3,050,000,000; and "others," including building and loan, bank, industrial, and World Bank securities, totaled $5,675,000,000.

At the time of compilation of the group's investments, the Life Insurance Association of America, source of the figures, had no breakdown available as to the type of stock issues held by the life insurance companies. However, of the $7,375,000,000 invested in utility bonds and stocks, $1,550,000,000 represented the latter.

Legal requirements in some states, including New York, limit insurance company investments in stocks to preferred issues. Further, the investment in the senior stock issues of any

[1] Authority for this estimate is the recent thorough study along this line entitled "Institutional Holdings of Utility Securities," by Owen Ely, published in PUBLIC UTILITIES FORTNIGHTLY, Vol. XL, No. 9, page 556, October 23, 1947.

company—industrial, utility, or other—is limited to 2 per cent of the life insurance company's admitted assets in any one company, and they cannot buy more than 10 per cent of the preferred stock of any one company.

At the end of 1945, the group of 49 life insurance companies had assets of $44,797,000,000. The difference between the total assets, $3,203,000,000, represents the amount available for investment.

In addition, savings banks invest about $1,000,000,000 in securities, scond largest of which, after governments, also is utilities.

THE greater use of sinking-fund provisions in utility bonds and the extension of such provisions to utility preferred stocks would, of course, be likely to stimulate more interest by institutional investors in all types of utility securities. Even common stocks, where legal restrictions do not interfere, would become more attractive to this investment class. This would be the obvious result of the amortization of senior debt and the automatic displacement of preferred securities through sinking-fund retirements—thereby enhancing the equity of the common shares.

"THE New Jersey Power & Light Company recently announced a cut in bills to its customers. The company stated that this was the result of a continued increase in the sale of power, and that it is now possible to give the average residential user two-thirds more electricity for the same cost as in 1937.

"Commenting on this, the DEMOCRAT, *of Flemington, New Jersey, said: 'There is a lesson in this announcement that too large an element among our people has failed to learn. Prevalent in recent years has become the notion that the way to get the most profit is to produce less and less and charge more and more. . . .*

" 'The fact that the power company can make more money for itself by giving more electricity for less money is in line with the best practices of enlightened capitalism. If the idea could be generally subscribed to by all producers, whether they be employees or employers, and by all who are classed as "middlemen," the current price spiral could be checked perceptibly and no business depression would threaten.'

"The general principle described by the DEMOCRAT *is completely sound, and represents a goal that all should seek. The principle of less work and less service for more money will, if it becomes entrenched, lead us to depression and economic chaos. The action of the New Jersey Company is in line with the general practice of the electric industry for many years past. This industry has been a leader in the philosophy of 'more and more service for less and less money,' as a business builder. However, it cannot buck the rising cost trend indefinitely—it will ultimately be reflected in its rates."*

—EXCERPT *from Industrial News Review.*

Outlook for New State Utility Laws in 1948

Although the number of state legislatures convening this month is much smaller than during the "big biennial" which occurs with every odd-numbered year (when 44 state legislatures convene in regular session), there is still a substantial and important agenda of new state legislative proposals shaping up for 1948 which are of special interest to public utility industries. Here is an effort to select and analyze proposals in particular states which fall into this category.

By BETHUNE JONES*

THERE will be many legislative and regulatory developments in state capitals during 1948 of direct and indirect concern to public utilities, a survey indicates.

Regular state legislative sessions are scheduled in California, Kentucky, Louisiana, Massachusetts, Mississippi, New Jersey, New York, Rhode Island, South Carolina, and Virginia, starting in January in all instances, except Louisiana which convenes in May. A recessed session of the 1947 Missouri legislature also reconvenes in January.

Although this may appear to indicate an "off year," compared with the heavy biennial sessions in the odd-numbered years, special sessions are expected to be called in many other states, and in virtually all states interim committees and special study groups will be at work on major issues. Also, many controversial proposals already are slated for submission to the voters at next fall's election, with more certain to be added. Significant rulings also may be expected from state courts and administrative agencies.

Utility rate regulation will be one of the major issues during the 1948 session of the Rhode Island legislature and may be raised in other states as public and political interest grows in proposals for higher rates, which during the past year were confined largely to telephone companies but are now spreading to include gas, transportation, and other utilities. Despite the economic justification for such rate increments, there have been indications that political opposition claiming to defend the people against "the utility interests" may be expected to grow along

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with the trend toward higher rates.

A special session of the Rhode Island legislature recently enacted a compromise measure under which rate increases sought by the New England Telephone & Telegraph Company will become effective April 2, 1948, unless the state public utility administrator meanwhile approves the company's schedule or decrees lower rates. The special session was called to delay application of the new rates, which otherwise would have automatically gone into effect December 3, 1947. The entire issue of utility regulation in Rhode Island is expected to be debated during the 1948 state legislative session.

THAT municipal as well as state public officials may inject themselves increasingly into the public utility rate situation was indicated when Mayor Edwards of Richmond, Virginia, told the recent annual convention of the American Municipal Association that protection of consumers' interests in the fixing of utility rates is a responsibility of local government. "Unquestionably," he asserted, "a great opportunity exists for all of us to ease the burden on the consumer when utility rates are under review . . ."

Significant rate regulatory developments may come through administrative as well as legislative action. Attracting widespread interest is the new rate-making policy of the Wisconsin Public Service Commission, which is now being tested in the courts of that state. Abandoning a formula involving a rate base and a rate of return as the only criterion, the Wisconsin commission outlined three considerations which it deems essential basis for making rates, as follows: (1) an estimate of the reasonable future cost incurred in the furnishing of such service as the public may be expected to demand from the utility involved; (2) the value of any class of that utility's service, where that value constitutes the limitation upon and practical equivalent of the rates charged therefor; and (3) a reasonable profit which it is proper for the utility to enjoy under all relevant facts and circumstances. The outcome of court appeals in this case may well prove a stimulus for legislative action to curb or promote such regulation therein, not only in Wisconsin but other states as well.

LEGISLATION for increased levies against public utility firms to pay the costs of state regulatory agencies was enacted in at least three states during the past year in a trend which may increase along with consideration of rate increase proposals. Arizona's 1947 legislature enacted over Governor Osborn's veto a bill directing the state tax commission to make an annual assessment against electric, gas, and water utilities to provide funds for regulating such corporations. It provided for an assessment of one-tenth of one per cent of the gross revenues of utilities. A bill setting up fees and charges for collection by the New Jersey Board of Public Utility Commissioners from utility companies for various services and applications was enacted in that state, while an Ohio measure increased assessments against utilities to pay for the operation of the Ohio Public Utilities Commission. Proposed but rejected in Vermont was a bill which would have empowered the Vermont Public Service Commission to charge utility companies up to 2 per

cent of their gross operating revenues for investigations of their existing rates. A more drastic similar proposal was unsuccessfully advanced in New Hampshire.

Regulation of rural electric coöperatives was raised as an issue in several states during the past year and may again come up during 1948 in some instances. A bill enacted by the 1947 South Dakota legislature permits REA coöperatives to operate in towns of less than 1,500 population with the approval of local governing bodies, and also allows coöperative lines to pass through cities over 1,500 population and obtain power in the towns. New Mexico's legislature enacted a measure requiring rural electric coöperatives to get authority from the state corporation commission before entering a city which already has a privately owned plant. A bill to place electric coöperatives under state public service commission regulation was rejected by the Arkansas legislature, although such regulation is already effective in a number of states and proposed in others.

ALTHOUGH the controversy over taxation of coöperatives will continue in the states as well as at Washington, little action on this subject appears probable in state capitals during 1948 when, with important elections coming up, there will be much sentiment to avoid highly controversial issues where possible. Unsuccessful efforts for elimination of tax exemption privileges enjoyed by coöperatives in competition with private business were made during the past year in several states, including Kansas, Maryland, North Carolina, and Wisconsin. Ohio's legislature, however, enacted a bill requiring farm coöperatives and other nonprofit organizations to pay the same franchise taxes as profit corporations.

Public ownership of utilities is not a live issue in most of the states with regular 1948 legislative sessions, with the result that there is unlikely to be any widespread controversy in state capitals on this score at least until 1949. Measures relating to public power may be raised in some states through the initiative process, however.

Measures to regulate the production of natural gas and bills relating to its introduction in areas where it is not yet available may be raised in some states during 1948. During the past year, the Indiana legislature authorized the state department of conservation to enforce conservation practices in the recovery of gas and oil from Indiana wells, and also authorized the department to become a member of the Interstate Oil and Gas Compact Commission. Tennessee ratified the Interstate Oil and Gas Compact. On the grounds that it would retard development of the Hugoton gas field, Governor Carlson vetoed a bill which would have empowered the

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Kansas State Corporation Commission to fix the price of natural gas at the wellhead.

NATURAL gas conservation probably will be an issue again in Louisiana, where a special state legislative session last spring approved a resolution repealing the state's 1942 policy declaration restricting increase of natural gas exports and abolishing the state office of natural gas conservation. It was decided not to seek enactment of a natural gas conservation law during the 1947 session of the New Mexico legislature, but an advisory board of gas producers and distributors agreed to prepare such a measure for legislative consideration in 1949.

As a key part of a program to bring natural gas into the state, Wisconsin's 1947 legislature enacted a bill repealing a state tax of 7 cents per thousand cubic feet on natural gas. Bills proposing natural gas taxes were killed in several other states.

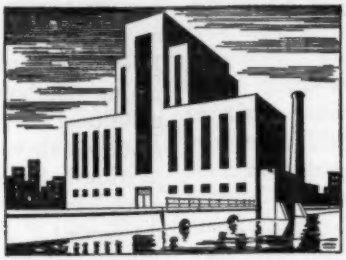
Indications point to a virtually certain boost in the level of state taxes as a whole in the years immediately ahead, although the trend will be slowed during 1948 because fewer law mills will meet and due to an effort to keep things quiet in the important election year. As an example of what may be expected in the future, state taxes of various types were increased during the past year by at least 26 states and proposals for new or higher levies flooded virtually all of the 47 legislatures which convened in regular or special session.

AN increase from 3 to 5 per cent in the Virginia state tax on receipts in excess of $500,000 of power companies will be proposed during that state's 1948 legislative session, and new or higher levies against utilities may be sought in other states. During 1947, Vermont revised its system of taxing telephone companies to obtain additional revenue; New York state made permanent a gross utilities tax previously levied on a so-called "emergency" basis, while Rhode Island made permanent a 2½ per cent tax on the gross earnings of electric power corporations and increased from 6 to 7 per cent of gross earnings a state tax on public service cable or telephone companies.

Besides facing the threat of increased special taxes, utilities also will be affected by general tax boosts resulting from such pressures in state capitals as demands for public works, expanded public payrolls, more state aid for education, housing subsidies, bonus and other aids for veterans, liberalized social welfare programs, increased financial assistance to municipalities, and other purposes, as well as inflated costs.

Enactment of sales taxes during the past year in Connecticut, Maryland, Rhode Island, and Tennessee brought to 27 the number of states with such levies. A special session of the Maryland legislature recently raised the exemption level of its new sales and use tax from 9 to 14 cents, with modification proposals due to be acted upon by 1948 legislatures in Connecticut and Rhode Island, and possibly in Tennessee in 1949. In none of these states is outright repeal in prospect, however.

SUCH opposition as has developed in the new sales tax states, stemming largely from the fact that the yields of the new levies are running far in



Public Ownership of Utilities

"PUBLIC ownership of utilities is not a live issue in most of the states with regular 1948 legislative sessions, with the result that there is unlikely to be any widespread controversy in state capitals on this score at least until 1949. Measures relating to public power may be raised in some states through the initiative process, however."

excess of original expectations, does not indicate a reversal of the current trend in the states toward this form of taxation. Despite the controversy which customarily follows sales tax adoption, and the fact that Oregon voters overwhelmingly rejected a sales tax proposal at a special election in October, there are many factors pointing to the probability that the list of sales tax states will be expanded. Several states are now confronted with the prospect of future adoption of either a general sales tax or a combination of selected sales levies and other revenue-raising measures. Higher rates in some existing sales taxes also may follow pressure for more state revenues, and tightened sales tax administration to curb evasion is probable.

Increased gasoline taxes were enacted during 1947 in eight states—California, Colorado, Connecticut, Maine, Maryland, Nevada, Rhode Island, and Vermont; passed but vetoed in Michigan, and unsuccessfully proposed in at least 25 other states. Other types of highway-user taxes also were upped in a number of states during the past year, with increased taxes to finance expanded highway construction currently under consideration in several states. Higher gasoline and other automotive taxes have been proposed for general purposes in some states.

BESIDES general sales and selected excise levies on such products as gasoline, alcoholic beverages, cigarettes, and soft drinks, new tax proposals in many states will include income taxes. Increased levies against personal or corporate income, in some instances both, were adopted during the past year by Arkansas, Colorado, Connecticut, Iowa, Massachusetts, Maryland, Pennsylvania, Rhode Island, and Vermont. Oklahoma was the only state to reduce its income tax, although cuts previously effective were continued in

California and New York. The New York income tax will go up in 1948, however, to support a new soldier bonus program. Oregon income taxes also will be upped, as a result of sales tax rejection.

PROPOSALS for enactment of state community property laws, which have attracted widespread interest among businessmen as well as individual taxpayers, continue to be advanced in various states. Indications are, however, that further action by state legislatures in this direction will be deferred at least until it becomes apparent whether Congress will extend to all states the Federal income tax advantages now enjoyed by residents of the community property states.

Considering a married couple a financial partnership with split ownership of income and other property, the community property system was originally in effect in eight states deriving their property laws from Spanish or French civil law. These states are California, Nevada, Texas, Louisiana, New Mexico, Arizona, Idaho, and Washington. Other states derived their property laws from English common law, under which the "head of the house" owns family property, with other members "dependents."

Little concern was aroused by this variance until Federal income tax rates jumped sharply. With married taxpayers of noncommunity property states now paying from 3.33 per cent more on gross incomes of $4,000 to 40.59 per cent more on gross incomes of $25,000 than taxpayers in community property states, where husbands and wives can halve their incomes for Federal tax purposes and thus obtain lower rates, the situation is arousing increasing attention and has become a factor in competition between the states for new industries.

OKLAHOMA amended its Constitution in 1945 to declare itself a community property state in order to obtain the Federal tax advantages. Pennsylvania, Michigan, Oregon, and Nebraska enacted community property legislation in 1947, with such proposals being raised in a number of other states despite warnings that such measures would disrupt traditional legal concepts of property rights, domestic relations, and inheritances.

Ruling that the measure violated the state Constitution, Pennsylvania's supreme court recently declared that state's community property law "vague, contradictory, and wholly invalid." Besides holding that the state legislature could not constitutionally take the private property of one person and transfer it to another, the court cited the "welter of confusion and hybrid jurisprudence" which would result from attempting to inject excerpts from the Spanish code into the mass of Pennsylvania common law. Aside from these considerations, the court found the act to be "so incomplete, conflicting, and inconsistent in its provisions" as to be altogether "inoperative and incapable of execution."

Result of the Pennsylvania law's invalidation, and reported confusion caused by such measures in the other new community property states, was expected to be increased pressure for congressional legislation to put Federal income taxpayers on the same footing in all states. If Federal action is not taken, however, there will be a revival

of interest in the possibilities of further state action.

IN the field of labor legislation, the actions of unions themselves will probably determine whether or not there will be any extension in 1948 of the trend of the past year during which bills restricting unions were widely enacted and measures intended to prevent strikes in public utilities were enacted in 11 states—Florida, Indiana, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, Pennsylvania, Texas, Virginia, and Wisconsin.

Unless labor unrest provokes further legislation, less attention will be accorded restrictive labor bills during the important election year. If public opinion is aroused by a wave of strikes, however, a new batch of restrictive state laws may be anticipated.

Steps to provide new and strengthened conciliation and mediation machinery may be expected in the states as a result of the expanded rôle contemplated for them in this respect by the Taft-Hartley Act. Only a comparatively few states now have such machinery functioning effectively despite the fact that some 37 states now authorize a state official or agency to engage in labor conciliation or mediation activities.

Bills providing for lower unemployment compensation tax contributions by employers were enacted during the past year by at least 15 states. This trend, accompanied by liberalization of benefits, is expected to continue further if employment continues at a high level. Lax administration and broadening of benefits may force tax increases in some states, however.

PROPOSALS for the establishment of so-called state "cash sickness" insurance programs, designed to compensate workers for loss of wages while absent from employment through non-occupational illness or disability, will be increasingly pressed. Such programs are now effective only in California and Rhode Island. There are no current indications, however, that proposals for comprehensive compulsory health insurance programs providing prepaid medical care, supported either wholly or partially by employer contributions, will get far in the states very soon.

In a trend progressing steadily in recent years and expected to continue, at least 25 states in 1947 liberalized workmen's compensation laws in various respects, such as increased benefit payments, enactment of new occupational disease laws, and establishment of second injury funds.

¶ "MUCH *of the aviation legislation enacted by the states during 1947 related to airport development, including measures enabling municipal airports to participate in the Federal-aid airport program; requiring the channeling of Federal airport funds through state aviation agencies; and in some instances providing state financial aid for airport construction. Much of this legislation was based on model bills developed by the National Association of State Aviation Officials and the Council of State Governments.*"

OUTLOOK FOR NEW STATE UTILITY LAWS IN 1948

Bills proposing state wage-hour laws modeled after the Federal Fair Labor Standards Act will continue to make their perennial appearance in state legislatures, but there is no current indication of the probable enactment of any such measure. No state has yet enacted a replica of the Federal wage-hour law. However, at least four—Connecticut, Massachusetts, New York, and Rhode Island—now directly or indirectly extend minimum wage order coverage to men as well as women and minors. Minimum wage levels under such orders are being revised upward by a number of states.

Also continuing to be issues in state legislatures will be bills designed to prohibit racial and religious discrimination in employment. Although rejected during 1947 by at least 15 other states, such a measure was enacted by Connecticut, bringing to 4 the number of states which now have such laws with effective provisions for enforcement. Similar measures were enacted by New York and New Jersey in 1945, and in Massachusetts in 1946. Indiana and Wisconsin have antidiscrimination statutes without stringent penalty provisions.

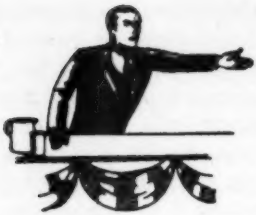
Regulation of intrastate aviation will be a subject of continuing state legislative interest. During the past year new aeronautics regulatory agencies were established in California, Idaho, Kansas, Oregon, and Washington, while existing agencies were expanded or revised in Georgia, Indiana, and West Virginia. In North Dakota the aeronautics commission was divorced from the state public service commission and is now a separate agency. Although intrastate commercial aviation operations are under the supervision of state public service commissions in a number of states, proposals for such control measures in additional states were not reported as enacted during the past year.

Much of the aviation legislation enacted by the states during 1947 related to airport development, including measures enabling municipal airports to participate in the Federal-aid airport program; requiring the channeling of Federal airport funds through state aviation agencies; and in some instances providing state financial aid for airport construction. Much of this legislation was based on model bills developed by the National Association of State Aviation Officials and the Council of State Governments.

Attempts to further curb state line trade barriers blocking the maximum development of highway transportation will be continued in 1948 state legislative sessions. During the past year liberalized motor vehicle size and weight regulations were enacted by at least 18 states, while motor vehicle tax reciprocity laws were also widely enacted or extended.

"The Bell system has added 600,000 telephones in rural America since the war ended, American Telephone and Telegraph Company announced recently. This means that the Bell companies had over 40 per cent more subscribers in rural areas than on VJ-Day. A third-quarter gain of 89,000 telephones in rural areas brought the increase for the first nine months of 1947 to 210,000."

—Editorial Statement,
New York Herald Tribune.



How Is the Lobby Law Working?

An analysis of a year's experience of the new Federal law requiring legislative agents to register. Some of the facts and information which have turned up raise some interesting questions as to the long-range effectiveness of this reform.

By LARSTON D. FARRAR*

It is only natural that the LaFollette-Monroney Act, requiring the registration of legislative agents and other representatives of special interests, should be of more than passing concern to public utility industries. The reason is because the public utility industries have been mentioned so often and perhaps unfairly in connection with alleged abuses or excesses in the way of lobbying. Criticism along this line was particularly violent through the late '20's and was kept alive by the elaborate and systematic reports and releases of the Federal Trade Commission on its 8-year investigation of the electric light and power industries.

It was doubtless in reaction to such criticism that the power industry reformed its own national association. It is well known that for a number of years, and until quite recently, neither the gas nor electric utilities had any Washington representatives of their industries, as such, who could reasonably be called lobbyists. On the other hand, for some years, antiutility lobbies or lobbies with strong antiutility proclivities have seemed to flourish like bay trees.

Also in recent years the communication industries, principally radio broadcasting, have reacted to the vague rumbling in Washington about lobbying. One former member of the FCC said he could not walk outside of his office without danger of falling over a half-dozen radio "lobbyists." During early consideration by the 80th Congress of the so-called Rizley Bill (to restrict FPC jurisdiction over some aspects of natural gas operations) charges and countercharges of lobbying were bandied about freely. Even the FPC was called upon to make some explanation of certain activities apparently designed to lessen the chances of the Rizley Bill becoming law.

* For personal note, see "Pages with the Editors."

HOW IS THE LOBBY LAW WORKING?

THE LaFollette-Monroney Act, of course, was designed to cover *all* lobbying activities, by any special group, whether industrial, or professional, or labor unionists, or even religious and reform organizations.

It has been in effect one year this month. How is it working out? Has it lessened the amount of lobbying? Has it brought all of the lobbyists to book as registered agents? Has it brought to light facts in connection with lobbying expenditures which should be brought to light? Does it need plugging up or more teeth put into its statutory provisions—in the light of the past year's experience? Or are there indications that the whole thing is unworkable and might just as well be scuttled?

The conscientious Washington reporter can get about as many answers as the number of questions he asks, if he attempts to canvass Washington offices along these lines. The few facts speak for themselves. Considering these, perhaps, the reader can draw his own conclusions as to whether the new lobby law is all right, or all wrong, or may be subject to correction.

First of all, the *philosophy* of the act must be kept in mind. The law does not say that lobbying of itself is bad or even undesirable. It does not attach any penalty or opprobrium to lobbies, *per se*. On the contrary, it clearly infers that lobbying is a perfectly legitimate operation, provided lobbyists comply with the rules. Since these rules consist chiefly of registration and disclosure of records, it could hardly be said that such regulation is especially onerous. To the political innocent, who may have been exposed to demagogic raging about the "evils of lobbying," this underlying philosophy of the LaFollette-Monroney Act would seem to betoken a fairly liberal and practical attitude. Actually, the framers of the law had no other course. The new law *had* to be both liberal and practical, in dealing with lobbying, or it would have run afoul of constitutional attacks. There are even those who still say that the law is suspect, on grounds of constitutionality, in its present form.

AS an institution, lobbying is as old as the history of government itself. With all due respect it may be fairly said that Moses was a lobbyist for the interest of his people in the court of Pharaoh, prior to the Exodus. Alexander Hamilton and Aaron Burr threw around charges of "improper" influence, when the new republic of the United States was still in its swaddling clothes. But as both government and the nation's economic system became more complex with the succeeding years, the nature of lobbying changed.

The early form of direct lobbying, the use of personal contact or friendship to influence legislation, is still with us, to some extent. So also is the so-called "social lobby"—described in novels and articles about alleged Washington political intrigue. This is merely the use of pressure based on social prestige and brought to bear on a new Congressman (or members of his family) to bring about his acquiescence or support of some particular line of legislation.

But, by and large, the great amount of lobbying done in Washington today is of the impersonal type. Much

of it is quite constructive in throwing the light of capable, informative, and admittedly special pleading on technical bills. Much of it was open enough, before the LaFollette-Monroney Act was ever suggested. For years, every Congressman knew who represented the farmers' lobby, the railroads, the labor unions, the anti-Saloon League, and so forth. Very often these Congressmen were glad to call on these parties for valuable information on various difficult measures pending in Congress.

In a broad sense, lobbying includes *any influence, proper or improper,* or attempts to wield such influence, with respect to the operation of government. The LaFollette-Monroney Act confines its duty to a somewhat narrower field of lobbying—attempts to influence *legislation* in Congress. The law does not cover a considerable amount of "special Washington representation" which has to deal with the administrative—as distinguished from the legislative—branch of the Federal government.

THE problem of the framers of the LaFollette-Monroney Act was to regulate legislative lobbying in such a way as to avoid conflicting with the constitutional guaranty contained in the Bill of Rights. This reads as follows: "Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

This First Amendment clearly envisions a free and independent citizenry, completely at liberty, either as individuals or through groups, to inform Congress as to what such citizens want, or do not want, in the way of legislation.

But it is a long-settled principle of constitutional law that even liberties granted by the Constitution are subject to orderly regulation when exercised in such a specialized manner as to create some danger of interfering with other liberties, in the absence of such legislation. Thus, for example, the Constitution entitles every citizen to make a living (if he can) in any legitimate calling of his own choice. But that does not entitle him to practice medicine or law, if he chooses to be a doctor or lawyer, without submitting to strict licensing supervision in the obvious interest of the public welfare.

So it is with the right to petition Congress. As a casual and spontaneous act of the individual citizen, or even a group of citizens acting in con-

¶ "IT *will be recalled that the State Department was most vigorous in opposing the proposed curtailment of its Voice of America overseas broadcasts. The Interior Department raised a loud squawk when some of its reclamation projects were in danger of getting the econony ax, and the Treasury sang the blues when its proposed budget was threatened with pruning, saying that the customs service would suffer and that smugglers would run wild along the Canadian border."*

—CARLYLE BARGERON.

cert, such petitions have undoubtedly the protection of the Constitution from any burdensome restriction. But when it comes to a question of a professional lobbyist—meaning one who makes a living or devotes most, or a substantial part, of his time to influencing or attempting to influence congressional opinion—that is something else again. It becomes something like the case of the citizen who wants to specialize in medicine or law. Such, at any rate, was the view taken by the framers of the LaFollette-Monroney Act. They thought professional lobbying was subject to reasonable regulation. And, so far, no court has ruled that it is not.

THE statistics revealed by registration of lobbyists with the clerks of the Senate and House of Representatives are not open to much question, although, to some extent, the figures are somewhat inconclusive. This lack of completeness is due to a number of factors. First, many groups which *seemed* to come within the scope of the "lobby law" have not yet registered. A special attorney, appointed by the Justice Department, has been looking into such cases and, according to recent reports, may soon seek some indictments from the grand jury. Second, similar groups that have registered have failed to furnish, either by accident or by design, the full data called for in the law. Third, many persons who have registered and have furnished all the information required still maintain that they should not be required to register, and only did so to avoid any possible question or criticism of their actions. In this category, incidentally, are the principal officers of the National Association of Electric Companies, which came to Washington in 1945, opened an office, and promptly displayed its name on the door. Its activities have never been secret.

So far, according to the official record through the fourth registration period (lobbyists are supposed to file a report every three months, at designated times), 911 individuals and organizations have signed on the dotted line as lobbyists with Congress. But of these 911, only 130 have filed financial reports, and it is obvious from even a cursory glance at these reports that some of the organizations have filed only a portion of their annual income and expenditures, not the full amount, as the law ostensibly requires.

Since particular lobbyists reported varying amounts of money received and expended for each of the four quarters, no exact over-all annual expenditure for all lobbyists can be estimated. To put it another way, no national bill for the "price of lobbying" can be deduced. The top 100 lobbyists reported total expenses of $3,737,372, while 17 of the lobbies reported expenses of less than $1,000 each, and 13 of them reported no expense at all. A rough *estimate*, which is only an estimate and could not be defended except as such, would be that lobbying in Washington cost those who sponsored the lobbies $15,000,000 in 1947.

But this does not include the money paid by taxpayers for *lobbyists employed by various government agencies*. It does not include lobbying *outside* of Washington. Most observers of the capital scene would agree that $5 is spent in the "grass

roots" each year by various organizations for "educational" purposes, for every $1 expended by the same groups, or similar organizations in Washington.

ALTHOUGH its sponsorship came from the so-called "reform element" in Congress, the "lobby law," at the end of one year, is now drawing criticism from the left, the right, and the middle of the road. It is as widely debated in legal circles as ever. But it has yet to run into a "test case." It still puzzles some plain citizens who want to petition Congress but do not want to be labeled as "lobbyists." All in all, the law has proved nothing so much as the fact that even such an unpretentious, simple aim as registering lobbyists is going to be a difficult thing to do by law—fairly, squarely, and completely.

Oddly enough there is no formal definition of lobbying or lobbyists in the law at all. But under the heading "persons to whom applicable" there is a requirement that all who receive, use, or solicit funds to be used "principally" in connection with attempts to influence the legislative process shall register. Here we have a money test. This would apparently exclude the wealthy old lady who for years has volunteered her own efforts and money for an anti-vivisection law. Apparently lobbying for love but not for profit is exempt from registration. But is such a distinction reasonable—that is, if the idea of the law is to throw publicity light on those who occupy themselves with attempts to influence Congress? Since when is the zealot who uses his own funds to be entirely discounted as compared with the more mercenary advocate? Some of the most effective lobbying in Washington is done at fashionable country clubs by people who never receive a penny for it, who do not keep an office or regular hours.

Another puzzle is the use of the word "principal." Does that mean that John Jones, representing a group of peanut growers, and receiving $50,000 a year for his services in Washington, can dispense with registration if he can show that he only uses $24,999 in his operations on Capitol Hill and the other $25,001 in his efforts on behalf of his clients in the offices of the Agriculture Department? The biggest puzzle, of course, is the exemption in favor: (a) of government officials acting in the performance of their duties and (b) of citizens who merely appear to give testimony at congressional hearings. More about these two exemptions later.

EVIDENCE of the confusion is found in the list of registered lobbyists. There are lobbyists in Washington who registered for the first quarter, but did not register the second quarter, because, they explained, they did not have occasion to visit the Hill during the second quarter. But did that prevent them from talking to a Congressman on the telephone, visiting him at his home, or meeting him for a cup of coffee in a drugstore downtown?

Literally thousands of persons who work in, around, with, or about Congress during the course of a year still are in honest doubt as to whether they should register as lobbyists. Those who have registered still wonder whether or not they have given all the details apparently required. Those who have not registered and do not feel

conscientiously that they are included under provisions of the law still feel occasional qualms and wonder if an overzealous or politically minded Attorney General could not put them on the spot and accuse them of evading the "lobby law."

The law has probably been a disappointment to the left wingers who agitated for it. As a matter of fact, it has revealed pretty clearly that the left wingers, or so-called "good lobbies" (from their viewpoint), are more numerous and sometimes better financed than the so-called "bad lobbies."

Representative Adolph J. Sabath (Democrat, Illinois), one of the more vociferous left wingers in Congress, as early as February, 1947, called for sweeping amendments to the "lobby law." He would, he said, have all lobbyists fingerprinted and cause all of those who work among the executives agencies to register, as well as those who work with Congress.

"I think, in addition, that all lobbyists should be required to furnish a photograph and to swear that they receive no secret pay not reported when they register," Sabath said.

"Then the list, with photographs attached, could be furnished to all members of Congress and government executives."

In spite of even such extreme (and probably impractical) suggestions, Sabath said frankly that "I am of the firm opinion that not even such steps would put a stop to all the various objectionable activities and methods of lobbyists."

CONSERVATIVE objections, too, come from the fact that not *all* lobbyists are required to register. Carlyle Bargeron, writing in a recent issue of *Nation's Business,* official magazine of the U. S. Chamber of Commerce, pointed out that "along with the growth of the registered lobbyists has come another variety in increasing number—the government lobbyist."

As a matter of fact, a good case can be made that Congress actually requires executive agencies to lobby, in a certain sense, by writing into every law the provision that the agency shall make an annual report to Congress. Representative Clarence Brown (Republican, Ohio) pointed out more than a year ago that most of these reports had become propaganda devices, pure and simple, while Representative Forrest Harness (Republican, Indiana) frankly calls the bureaucratic busybodies "our most vicious lobby." He currently is spearheading an attempt to get a full investigation of the whole range of lobbying by Federal agencies, including the FPC.

The basic trouble of the so-called "lobby law" is that if it cannot go far enough to require *all* lobbyists to register, then it becomes an unfair restriction against the activities of those who are required to register.

THE confusion about provisions of the law is so widespread it can hardly be dismissed as quibbling or insincerity. For example, religious lobbyists, of whom there are some 25 or more registered with Congress and are presumed to be trying honestly to comply with the law, are just as confused as the more suspect groups.

The Baptists of the United States show the same diversity of thinking about the "lobby law" as do private

Representative Sabath on Lobbies

"OUR present lobby law does not reach the shrewd, unscrupulous lobbyist or propagandist who operates from behind a fine-sounding name or an institute, or foundation, leading the public to believe it is an independent patriotic research or educational project, when it is actually a lobby in disguise. Neither does it reach the social lobbyists, who are frequently women of wealth and position, who do their lethal work at parties, receptions, and dinners. . . . To sum up, the law now, instead of outlawing lobbyists, has given them legal standing, and they are bolder now than ever."

business groups and associations. While the Northern Baptist Convention registers its Washington representative, the Southern Baptists do not, although frequently the president of the Southern Baptist Convention is just as active in Washington as the legislative representative of the Northern Baptists. No criticism is stated, or implied, in any of these examples. The examples are given to show the honest confusion which prevails about this law.

But a practical consideration intrudes at this point. *Could any such law be so written as to include all lobbying in Congress and still not offend the Constitution?* Bear in mind some of the most effective lobbying is done between Congressmen themselves. As to Federal officials, Congress rightly insists that they report annually, so as to give an account of their stewardship.

THEN, there is the appearance of Federal officials before Appropriations committees and subcommittees. In the light of the present lobby law, this is probably a function in the nature of performing official duties. Yet, it certainly is a made-to-order opportunity for lobbying; and few bureaus overlook the opportunity. Private industry has to content itself with having representatives who cool their heels in antechambers, pleading for time to be heard. Representatives of official departments often walk right in and sit down with the Appropriations Committee in executive sessions. What they say is not even made a matter of public record until months afterward and then only if the committee so desires. How could a lobby law separate the need of Congressmen to know how Federal officials are spend-

ing the public's money from the arguments and propaganda which these officials might think up to justify more and perhaps excessive appropriations?

Finally, there is the exemption, already mentioned, of persons who merely testify before committees. Does this include people who make it a business of "arranging time" for *other* people to testify before committees? Broadly construed, this exemption could cover most of the real lobby work which industry representatives, labor union spokesmen, and others perform! In that case, the remaining lobby activities would merely cover personal contact with Representatives and Senators.

Even here, an attempt to make the law go far enough to reach all forms of lobbying might end in making it impractical and ridiculous. Calling a Congressman, by telephone, sending him a letter, or even a Christmas card might be regarded as an attempt to "influence" the lawmaker. Any such law would, of course, fall of its own weight and should.

As indicated above, Congressman Sabath now admits that he worked for and voted for a law that made lobbyists bolder than ever. He could have added that other Federal laws do apply—and have applied for years—against the "shrewd unscrupulous lobbyist" who misrepresents himself. One wonders if he is contemplating passing a law against cocktail parties, or, if not, whether he would pass a law prohibiting women at social functions from discussing anything that comes to their mind, particularly if it touches on current legislative problems?

If the "lobby law," however, has promoted no great social gain, and has failed in making all lobbyists register, it has at least furnished the nation with an interesting set of facts about typical lobbyists; *i.e.*, the men who are employed by groups, associations, foundations, institutes, churches, and private companies to influence Congress in one way or another. Although it did not require a law to prove it, the law has shown that it is as natural as love making that business, labor, farmers, consumer groups, church organizations, and a thousand and one other interests in our economy *must* let Congress know their wishes in relation to laws that may affect them. It has revealed that lobbyists for the most part are better paid than the average citizen, but that could be expected. Lobbyists have to incur much greater expenses. They require higher degree of training to deal constantly with highly skilled legislators and complicated facts.

It is, as already suggested, a wrong idea that most lobbyists really hang around lobbies pulling congressional coat tails. Modern professionals disdain such crude methods. They fight, for the most part, above the counter—with facts, figures, and arguments, either in congressional hearings or in the Congressman's private office. They employ research staffs and specialists. They channel newspaper and radio opinion and leave no stone unturned to demonstrate that the interests of their clients, by a happy coincidence, are exactly the same as the interests of the American people as a whole. Whether they are individual lobbyists hired for a single job, or permanent pressure groups, their technique almost invariably is to identify their own wishes

with the "public interest." If they are fighting against a bill for Federal control of insurance, it becomes a fight for "states' rights." If a retail association fights the return of OPA, it is likely to make the private citizen feel he is about to be put back in the clutches of bureaucracy. If a church organization puts out a press release against a certain measure, almost invariably it connects its stand up with the "long-term interests of the American people."

THERE are always hundreds of lobby battles raging in Washington and a citizen of the nation's capital would have to confess to being deaf, dumb, and blind never to take a stand, however innocently, on one or more of the issues. Every pressure brings into being a counterpressure.

The first year of operation of the "lobby law" also proves that the law did not cut down lobbying. Congress was subjected, at least, to as much pressure in the year 1947 as in any previous year. Remember the Taft-Hartley Act.

This record further proves that the financing of a lobby seemingly has very little to do with the success or failure of particular organizations which wage heavy battles in Congress. Examples are easy to find of the "failures" that went down to defeat in the past year, despite their well-heeled financial conditions.

The top spender was the American Federation of Labor, which officially spent $834,374 to defeat the Taft-Hartley Bill. If the money influenced any votes, the number certainly was not appreciable, for the bill passed the House and Senate with votes to spare —even though a two-thirds majority was needed to override the presidential veto. Altogether, unions must have spent millions of dollars in the futile campaign to defeat the new labor law, but this does not reflect on propaganda and lobbying as such so much as it reflects on the judgment of the men who do the propagandizing and lobbying. The unions years ago could have cut the ground out from under those seeking such stringent labor legislation by putting their own houses in order, but they didn't—and no amount of money or lobbying could have changed the results last spring.

THE second highest group of spenders were those representing electric power utility interests, including REA co-ops. The biggest spender in 1947 was NOT the business-managed electric power industry, but the National Rural Electric Coöperative Association, a lobby group for the REA co-ops, which generally are pic-

¶ "IN *the last few years, I have seen this* [*Reclamation*] *bureau pass wholly under the domination of politicians and propagandists, with a corresponding decay of standards and professional competence, and I have seen it emerge as a powerful pressure group eager and willing to use public funds to defeat public legislation and to build up its own empire.*"

—U. S. SENATOR SHERIDAN DOWNEY *(California)*

tured as being an amalgamation of plain, overall-clad, modest-income farmers trying to cut their operating expenses through coöperative efforts. The NRECA spent $227,000, while the other agency, National Association of Electric Companies, spent a more modest $190,000. Whether the NRECA got the huge appropriation for REA co-ops—some $225,000,000, second greatest in all REA history—is a matter of question.

In any event, REA made out fine in 1947.

The Citizens Committee for Displaced Persons spent $288,727 in a futile effort to pass a bill which would have admitted 400,000 displaced persons to the U. S. without regard to immigration quotas.

The real estate lobby—represented by several groups—spent plenty of money trying to get rent control repealed, but had to be satisfied with the mild increases granted by Congress.

No one can say with certainty that the money spent by these lobbyists and lobbies was wasted, however, for they may have laid the groundwork for results they will get at a later date. It cannot be denied, for instance, that organized business spent probably many millions of dollars in educating the general public to the need of labor law changes through the years preceding passage of the Taft-Hartley Bill.

Although, in the giant battles of lobbies carried on without letup, publicity frequently is used more than other techniques, the more direct and subtle methods are not disdained any more today than they ever were. Personal contacts are still the lobbyists' biggest stock-in-trade, from a purely "professional" standpoint. That is why, as the record clearly shows, ex-Congressmen often turn to lobbying for a living.

MANY theories have been advanced for the recent huge growth of these professional agents for special interests. But the most obvious explanation likely is the simplest. It is that the Federal government has expanded beyond anything known, or contemplated, in the past. With every increase of centralized power the private and community and regional government groups affected have had to hire representatives to act at the source of the power in the capital. Hence the "mayors'" lobby, the "governors'" lobby, etc.

The over-all result is an expansion of lobbying beyond anything that could have been imagined even a decade or so ago. We were taught in school that our government consists of three branches—legislative, executive, and judicial. A more realistic summary today would include a fourth branch: organized lobbying, which the late Senator Norris of Nebraska once called the Third House of Congress.

If we must have lobbies—and it's pretty obvious that we must—it would seem best to have lots of them, representing every shade of self-interest, as they do. This balance of pressure groups is a feature which, if not abused, can be constructive in its ultimate effects. If abused, no mere "registration" of all lobbyists, real or imagined, who try to influence Congress, will cure the abuse. That will take specific legislation aimed at specific abuses. The present lobby law is entitled to a longer trial. But, so far, its results indicate that it is far from perfect legislation.

Washington and the Utilities

Downey Throws the Book at RB

LEST Reclamation Bureau officials somehow get the idea that it is only some eastern Republicans who are unenthusiastic about their work providing irrigation and power supply in the great open spaces, one of California's sterling sons of the Democratic political faith has written himself a book. He is none other than the senior U. S. Senator from California who recently surprised his colleagues, newsmen, and others in Washington by the release of a handsomely illustrated book entitled *They Would Rule the Valley*. It effectively presents the Senator's charge that the Bureau of Reclamation is attempting to impose sociological regimentation on agriculture, particularly in the Central valley project.

The Senator gave as a reason for writing the book, the 160-acre limitation on reclaimed land, which he has long contended is unworkable and uneconomic for California's Central valley. He claims that the bureau is engaged in a deliberate campaign of misrepresentation involving this great Federal project, which, he says, may some day involve a total investment in irrigation, power, and allied public works of more than $3,000,000,000.

Michael W. Straus, Reclamation commissioner, comes in for the principal darts of Senator Downey's criticism. Straus is pictured as "seeking to grab control of California's water and power sources from the people who develop, use, and pay for them. The acreage limitation is described as a tragic mistake which will "return thousands of rich farm-land acres to desert." Speaking of Straus, Downey says in his book:

> Succeeding Harry W. Bashore (ex-bureau commissioner), he stepped down from a higher position so he could enforce his will more directly.
>
> As ignorant of engineering, irrigation, and western conditions as any man could be, with no important administrative experience behind his entry into the government service, Straus represents the zealot, the politician, the ideologist, who lives by the manipulation of propaganda, freely dispatched at public cost, who cares nothing for the truth except how best to obscure it.

SECRETARY of Interior Krug is also the target of the Senator's critical shafts. Describing Krug, Downey asks rhetorically:

> What part does he play in the Central valley drama—this tragedy, comedy, or farce—however you may wish to describe it? When Krug was brought to the exalted office he now holds, I thought order would succeed chaos. . . . Is the Secretary the dupe of his subordinates? Is it their misstatements that have misled him? I don't know, but I cannot forget certain of his assertions.
>
> I cannot forget that I heard him assert vehemently that Richard L. Boke, regional director (whose territory included the California project), was an engineer. I cannot forget that when Boke publicly admitted he was not, the Secretary sank back into his seat, embarrassed, confused, with no explanation to a Senate committee of his odd mistake.

Downey calls Marion Clawson, bureau of agricultural economics specialist, "this alleged economist," and reserved a special barb for James Roosevelt who had urged the 160-acre limit.

"I can say with confidence," he declared, "the responsible leaders and public officials of California will not trust their fortunes to the vague schemes and glittering promises of the Bureau of Reclamation in its desire to dominate the farm economy of a great region. They will utterly reject acreage limitation."

Although the hostility of California's "water Senator" to the Reclamation Bureau has long been one of those open secrets so commonplace back of the Washington scenes, the emergence of this feud in such an open form as a published book is seen by some Washington observers as portending a new and different kind of split in the Democratic party of California—already ripped somewhat by Attorney General Kenny's avowed political apostacy from the Democratic ranks in favor of a third party movement for Henry Wallace.

Downey, despite his original support from the Townsend old-age group, is regarded as a right-wing pillar of the party. With other state party leaders, such as James Roosevelt, trying to keep the Kenny bolters from amounting to anything substantial, and Ed Pauley having trouble with Republican hecklers in Congress, Downey's personal tiff with such an important arm of the administration as the Reclamation Bureau may well have political as well as policy repercussions.

Although the Senator's book does not disclose the name of the printer, the copyrights are listed in Downey's name. It is reported to be obtainable from Publishers Service, San Francisco, at $5 a copy. Needless to say, it seems to be more or less required reading in the Interior Department offices these days.

Nobody's Mad at the Co-ops

THE coöperative movement is getting a lot of attention and kind words these days around the nation's capital. Republicans and Democrats vie with each other in protesting their abiding admiration for the courageous and independent spirit which moves farmers to join together in a spirit of neighborly progress, and all that sort of thing. Likewise, they accuse each other of really having the knife out for the coöperative movement. At times, all this must seem very puzzling to Hiram and his neighbors back on the farm who, statistics show, are more than likely members or patrons of at least one coöperative enterprise, including the REA co-ops.

The answer, of course, is politics. Outside of the South, the farm vote has been mostly Republican and the GOP members want to keep it that way. The Democrats think they see a chance of making the co-ops an issue which could snag a few or many votes in the hinterlands. The way things are stacking up right now, they are going to need them. Anyway, the Democrats got the jump on the situation, early last year, when Representative Ploeser, Missouri, Republican, and chairman of the House Small Business Committee, began investigating the justification or lack of it for co-op tax exemption. The House Ways and Means Committee got into the act with committee hearings of its own along that line, and the Treasury Department (surprisingly enough for an administration agency) furnished some first-rate documentary justification for those who claim that the co-ops are getting too much of a free ride on the taxpayer's merry-go-round.

ALERT Senator McGrath of Rhode Island, Democratic national chairman, seized on all this activity as evidence that the Republicans, egged on by Big Business (although pretending to act for Little Business), were conspiring against the welfare of the coöperative movement. Said McGrath: "Farm coöperatives have been subjected to hostile investigation by Republican leaders. . . . The Democratic party will continue . . . to halt the efforts to discredit and destroy these organizations."

Secretary of Agriculture Anderson chimed in, with the official word from the Chief himself. "I want to say," said Anderson, "that I am for farmer coöperatives. I want to say just as plainly that the Truman administration is for farmer coöperatives. I say that with the specific authority of President Truman himself."

Of course, this was politically as novel and exciting as if Truman had come out flat-footed in favor of the Ten Commandments. But the nasty implication

was that the GOP is *against* farm cooperatives. This is what caused Republican blood pressure to start pounding past the danger point. The Republicans came back with the charge that the Democrats were dodging the real issue, which is tax equality, and that nobody is trying to make the co-ops do anything more than pay the same kind of taxes as the rest of the business community pays. In fact, the party has not even been specific about that, as yet. There has just been a lot of testimony, the best of which came from the administration's own Treasury.

By way of rejoinder, Chairman Ploeser's committee is planning more hearings early this year on co-op tax practices, stressing advantages that would accrue over the long run from a policy of tax equality. It will say that the co-op movement will be strengthened really, by tax equality. Representative Ploeser's group was scheduled to make its annual report to the House shortly after the session opened. He wants $85,000 to continue his committee's work through 1948, and will probably get most if not all of it. The upshot seems to be that the Republicans will stand on the factual situation about co-op tax practices as they have been developed by testimony from administration sources and elsewhere.

But they will not actually move this year to remove one 5 cents of the tax advantages which the co-ops now enjoy. The idea is to leave the issue pretty slim pickings for the Democrats. Senator McGrath and his followers are hopeful. It may be a phony issue, as the Republicans claim, but phony issues have been known to work, sometimes better than real ones. All of which adds up to the suggestion that we may be hearing a lot more about co-ops and the taxes they do or don't pay before the votes are finally counted next November.

An SEC Cat Comes Back

If the members and staff of the SEC, trying to get comfortable in their new quarters in Washington, D. C., had their way they would like to have left one very annoying policy problem behind in Philadelphia, or lost it in the moving. It is the old issue of the rule of competitive bidding. Despite SEC staff insistence that this is no issue at all, but a finally settled question—like the cat with the proverbial nine lives—it keeps reappearing, sometimes under positively embarrassing circumstances.

Under the present rules, public utility holding companies and their operating subsidiaries are required to call for bids on securities offered in excess of $1,000,000 or for maturities in excess of ten years. From time to time the analyses in the financial press, including the financial department of this publication, have reported evidence that the bidding rule has become an obstacle for the sale of preferred and common shares for a number of good and sound public utility companies. As this evidence accumulates, in the present uncertain market, the SEC people are beginning to wonder how the situation can be corrected without sacrificing the rule.

A "blanket" exemption to utility preferred and common offerings would be an admission that the rule was unwise and might lead to congressional tampering with the Holding Company Act. On the other hand, a quasi automatic exemption "for cause" shown in particular cases, practiced over any period, would call the permanency of the rule into even more serious question.

The return of the commission to Washington was expected to establish a somewhat closer, practical liaison with key administration officials. And it may be that the White House will furnish the necessary guidance in the form of an appointment to fill the vacancy of Chairman Caffrey, who recently resigned to enter the somewhat greener pastures of New York city law practice.

Incidentally, Caffrey's resignation makes the first time in the history of the "big three" Federal utility regulatory commissions (SEC, FPC, FCC) that there has been a vacancy at the same time on every one of them. (See page 101.)

Exchange Calls And Gossip

Truman FCC Appointments Keep Pot from Boiling

THE new faces at the Federal Communications Commission may be novel enough to call a halt to congressional plans to investigate that agency. Commissioner Jett's resignation on December 26th gave the administration and Congress an opportunity to name an FCC member from each party, thereby, at least temporarily, slowing down Congress' investigatory bent.

The appointment of New Dealer Wayne Coy as chairman of the FCC, replacing Charles R. Denny, is somewhat offset by the appointment of Republican career man, George E. Sterling, to Commissioner Jett's seat. This leaves the commission in political balance, with three Democrats — Coy, Durr, and Walker; three Republicans — Hyde, Jones, and Sterling; and one independent—Webster. The fact that the commission will have such balance will probably indicate that the threatened congressional opposition to Coy's nomination will dissipate itself without reaching serious proportions. Some opposition against Coy's confirmation by the Senate is still expected. It is significant, however, that the man who first called for an FCC investigation in December, Senator Homer Capehart, Republican of Indiana, now says he will not oppose Coy's nomination.

MR. COY is a native of Shelby county, Indiana. He is forty-four years old and graduated from Franklin College in 1926. He was an active Indiana newspaper man until 1933 when he became secretary to the newly elected Governor Paul V. McNutt.

Coy first came to the attention of Harry Hopkins in 1935 when he was state and regional administrator of the Work Projects Administration. In 1937, Coy accompanied McNutt to the Philippines during the ex-governor's term as High Commissioner there. Later he followed McNutt to Washington to become his assistant Federal Security Administrator. In 1941, Coy became special liaison assistant to President Roosevelt, as a contact man between the White House and the Office of Emergency Management.

Nineteen forty-two found Coy as assistant director of the Budget Bureau. Early in 1944, he became assistant to Eugene Meyer, then publisher of *The Washington Post*. At the time of his appointment to the FCC, Coy was radio director of the *Post* and manager of its broadcasting stations, WINX and WINX-FM.

It is believed that Coy took at least a 50 per cent cut in salary when he left the *Post* to join FCC.

George E. Sterling is a native of Peaks Island, Portland, Maine, where he was born June 21, 1894. He matriculated at Johns Hopkins University and Baltimore City College. He was one of the first radio "hams" and established an amateur radio station at his home as early as 1908. Later he fought in two campaigns with the United States Army on the Mexican border in 1916, and in France with the 26th (Yankee) Division.

Sterling's government career began in 1923 as a radio inspector with the Bureau of Navigation in the Commerce Department. He was on the staff of the Federal Radio Commission and was transferred to Washington in 1937.

During World War II he was chief of the radio intelligence division of the FCC, which did yeoman service in intercepting enemy broadcasts. He was appointed chief engineer of the FCC on May 1, 1947.

Commissioner Jett resigned from the FCC primarily for financial reasons. He told reporters that he was returning to his home city of Baltimore to become vice president of the Sunpapers and director of their radio division. He indicated that his salary would be at least twice the $10,000 a year he was receiving at FCC.

INCIDENTALLY, former FCC Commissioner Wakefield has been appointed by President Truman to be the official United States member and chairman of the U. S. delegation at the Provisional Frequency Board, which opens a 4- to 6-month hearing at Geneva, Switzerland, on January 15th. The Geneva post is not permanent, but it does indicate that President Truman still thinks highly of Wakefield's ability, and cancels any suggestion that Wakefield, personally, lacked the President's confidence when the Wakefield renomination to the commission was suddenly withdrawn last summer in favor of Representative Robert E. Jones. There is some speculation that, upon his return to Washington next spring, another important regulatory post will be found for ex-Commissioner Wakefield if he desires to continue in public service.

New Labor Difficulties Brewing in 1948

THIS spring may find the communications industries—and the nation—plagued by twin strikes. Both the telephone and telegraph industries may be struck in the spring of 1948, and possibly at the same time. This possibility rose late last month when the Federal Mediation and Conciliation Service named a fact-finding panel which, in effect, postponed the threatened telegraph strike for a while at least. At just about the same time, the Communications Workers of America, the largest union in the telephone business, announced it would be seeking wage increases at contract time next spring.

The panel on the Western Union Case includes Eugene Meyer, chairman of the board of *The Washington Post;* Waldo Emanuel Fisher, University of Pennsylvania industrial relations professor; and Charles A. Horsky, ex-Justice Department attorney. The three will rule on whether or not the contract between three AFL telegraph unions and Western Union could have been reopened for consideration of wage adjustments, and just when it could be so opened. According to the contract, provision is made for a study of the "wage-profit" relationship in connection with a wage adjustment. The union contends that on the date the study is made, the wage-profit relationship for the entire year should be taken into consideration in determining whether an increase can be paid employees.

The company insists that the wage-profit relationship of the company and its unions should be made as of the date on which the study is begun, not on the basis of the entire year which preceded it. What makes this argument so bitter is that the telegraph company made some extra profits last spring as a windfall during the telephone strike. The company says this windfall should not figure in wage negotiations, because it probably will not recur again.

THE panel can do no more than resolve this technical argument and set the date on which the study officially can be made. It can make no recommendations as to wage adjustments, nor even indicate whether or not they are justified. One effect will be, however, to halt a telegraph strike threat until spring.

Of course, the springtime is always the favorite time for negotiations between telephone unions and the telephone industry, for the nation-wide contracts traditionally expire and must be renewed at that time. Last year, contract time pro-

duced the epochal telephone strike lasting five weeks and costing employees and the telephone industry uncounted millions of dollars in salary and revenues. This year the unions already have announced that higher wages will be sought, and another grave situation may result.

The Communications Workers of America, representing nearly 250,000 telephone workers across the country, has scheduled a meeting in Washington on January 19th of the chief negotiators of its 33 divisions. At this meeting a bargaining program will be laid out, and demands for a wage increase and other contract changes will be formulated.

The whole bargaining program will emerge sometime early in February. Chief target of the union will be the added telephone revenues granted Bell system companies by various state utility commissions during 1947. Said CWA President Beirne:

> Prices and profits have risen steadily. The Bell system has obtained $81,000,000 in additional annual revenue in the past year. It is asking for at least that much more. This will make their profits even greater. The telephone industry can pay substantial wage increases to its workers out of these profits without further demands for price increases.

Noticeably absent from any of Beirne's statements is the unvarnished threat to strike in 1948. This is considerably different from the CWA approach last year, when it began laying strike plans months in advance, then made its wage demands more or less on an "or else" basis. The resulting strike almost wrecked the independent union, emptied its treasury, and brought about the entrance of the CIO into the telephone labor picture as a new threat to CWA independence. Beirne now refers to the strike possibility as "a clash of some kind in 1948." It is too early even to surmise how serious such a clash might be, but, if it should be coupled with a telegraph walkout, it might be a matter affecting the national health and welfare, and so qualify for handling under terms of the Taft-Hartley Act.

It is common knowledge in Washington that the President will stay away if at all possible from using the Taft-Hartley Act's provisions which permit him to delay a threatened national strike in a vital industry for as long as eighty days. Still, such a double-barrelled threat to national security, if it develops, might make him change his mind and "get into the act," using, of all things, the much maligned labor legislation he opposed.

White Radio Bill Revamped Again

A REVISED version of the White-Wolverton Bill (S 1333) has turned up in the Senate Interstate and Foreign Commerce Committee. As a result of radio industry objections to the original White Bill amending the Federal Communications Act, the bill is considerably softened in its regulatory provisions for radio. So far as the common carrier side of FCC regulation is concerned, the provision calling for statutory division of FCC and the radio and common carrier panels is still very much confused. A printed version of the revised bill calls for a 9-man commission with a 3-panel division of three men each, regulating radio, common carriers, and special services, respectively. But, subsequently, the bill's sponsors decided to favor a 7-man, 2-panel commission with the chairmanship rotating among the commissioners. Under the 2-panel set-up, common carrier and special services would be regulated by one panel.

There is also the possibility that machinery will be set up in the bill permitting appeal to the full commission from decisions of the subgroup. The very fact that these regulatory provisions are being bandied about indicates that thinking on them is far from settled. There will be a great deal more said about the controversial terms of the White-Wolverton Bill before it is finally hammered into passable shape. Chances of its eventual passage in 1948 appear only lukewarm.

Financial News and Comment

By OWEN ELY

Review and Forecast of Utility Earnings

To attempt to forecast the earnings of the utility companies during 1948 is a difficult and dangerous project—difficult because statistical data are inadequate, and dangerous because the results may prove misleading. However, the department feels that the advantages of such a survey may outweigh the difficulties involved.

Investors are obviously puzzled over the outlook for utilities—fearful that inflation will choke the steady flow of dividends which many leading utilities have maintained through decades of war and peace, depression and prosperity. This fear, combined with the effects of common stock financing and sale of holding company portfolio holdings, has undermined confidence in utility stocks in recent weeks. The difficulties encountered by utilities in undertaking senior financing also have proved a factor. During the period December 6th-24th railroad stocks (as measured by the Dow average) advanced nearly 14 per cent and industrials about 3 per cent, while utilities remained almost unchanged at close to their lowest levels of the year.

Two major segments of the utility industry—the electric and natural gas utilities—have thus far shown surprising resistance to inflation trends. Electric utilities in October enjoyed a gain in revenues of 13 per cent, which almost offset a 43.6 per cent gain in fuel costs, a 15.6 per cent increase in wages, and a 20.4 per cent gain in miscellaneous operating expenses. Net operating revenues from electric operations were down 1.9 per cent and operating income from other departments was off 65.6 per cent, but these declines were almost offset by a 74.5 per cent increase in miscellaneous income.

While interest on long-term debt was up slightly, amortization items were lower so that total income deductions were 1.1 per cent under last year and net income for the month was down only .4 per cent. Net income for the ten months ended October 31st showed a gain over last year of about .3 per cent despite the fact that only three individual months (April, May, and June) showed gains. Moreover, this was accomplished despite severe drought conditions in some areas, which sharply boosted fuel costs and reduced earnings in these sections.

The natural gas companies have made a very satisfactory showing and are expected to show an increase in net income of about 13 per cent for the calendar year 1947. Manufactured gas companies (for which no monthly totals are compiled, except with respect to revenues) will probably make disappointing reports, despite the granting of some emergency rate increases. Brooklyn Union Gas, probably the largest artificial gas company, had to discontinue dividend payments on its common stock in September.

The telephone and transit companies also have felt the full brunt of inflation trends, because of the high proportion of wage costs to revenues. While American Telephone and Telegraph has maintained its $9 dividend rate—a fixture for many years—most of the affiliated Bell system companies have had to reduce dividend rates temporarily, since rate adjustments have lagged behind wage advances.

The difficulties of the transit companies are illustrated by the recent experiences of Twin City Rapid Transit. In 1946 the company was able to report earnings on the common stock of $4.29 a share. Fixed charges had been steadily reduced for many years, and the company seemed to be in good condition to weather any storm. Nevertheless, the 1947 rise in costs hit the company hard and in the first nine months coverage of charges and preferred dividends was only .67 compared with 3.08 in the same period of 1946. A fare increase, granted in October, is expected to increase revenues and earnings substantially, but of course there may be new wage demands to cope with next year.

Third Avenue Transit for the nine months ended September 30th showed a deficit of $1,799,000 (after allowing for full interest on the adjustment bonds) compared with a red ink figure of $558,000 for the same period last year. The company may be able to increase its fares at the same time the subway system changes to an 8-cent basis, which will radically change the earnings picture. Coördinated Transit (subsidiary of Public Service Corporation of New Jersey) has also experienced a sharp decline in earnings, and has asked for a fare increase.

WHAT is the 1948 outlook for the earnings of the electric utilities? Perhaps the answer can best be obtained by analyzing the major items in the income statement for the twelve months ended September 30th. Kilowatt-hour output appears likely to maintain about a 5 to 8 per cent lead over 1947, which would allow for stabilization of industrial output around or slightly below current levels. A gain of 6 per cent (compared with the 11.3 per cent gain of October and 13.7 per cent in September) would seem a reasonable guess, barring any major economic upset. Continuance of construction activity is expected to provide new residential and commercial customers, and the vast numbers of new appliances (including television sets) also are expected to bolster residential demands, more than offsetting any readjustment in industrial service.

Assuming a 6 per cent gain in kilowatt-hour output, an increase of 9 per cent in revenues appears likely. In October average receipts per kilowatt hour were about 1¼ per cent over last year, indicating that automatic fuel clauses in industrial rate schedules had begun to take effect. It seems probable that there will be some further increase in industrial rates.

STATE commissions will probably not force further downward adjustments in residential rates, except where these already have been agreed on (as in the case of Niagara Hudson's proposed $1,000,000 cut). Consolidated Edison is now showing resistance to proposed further reductions in electric rates, which have been pending for some time in connection with the investigation initiated by the New York state commission.

In the month of October the average residential rate was about 3.17 cents, the same as in September (but compared with 3.28 cents a year ago). It looks as though the steady decline in rates had ended, and if there are a few increases granted next year the rate may actually increase slightly. Of course, average kilowatt-hour receipts are affected not only by the rate schedules in effect, but by changes in average residential consumption; as customer usage increases the sliding rate scale in almost universal use automatically reduces the so-called average rate, and it is difficult to separate this effect from changes in the schedules themselves.

WHILE increases in residential rates may still prove unpopular politically in the large cities, increases in basic industrial and commercial rates (apart from the automatic increases provided by the rate contracts) may prove easier to put into effect. Rates for large industrial service in October averaged about 1.07 cents, or only about one-third of the cost for residential service, and far below the average rate for commercial service. It is quite obvious that industrial rates are on a competitive basis. With present high costs affecting industrial producers of power, it is probable that the utilities could raise rates for such service without disturbing competitive relations to any dangerous extent. Moreover, the utilities should seriously investigate whether they are not losing money on some of these industrial contracts under present conditions.

Getting back to our 1948 forecast, we think it is safe to predict a 9 per cent gain in revenues based on a 6 per cent increase in output. Taking up the principal items of the expense dollar, we find that fuel costs in the twelve months ended September 30th were 40.7 per cent over the previous period. In 1948 there would normally be an increase of 6 per cent to keep step with anticipated higher output, but this might well be offset by smaller use of inefficient plants if water conditions return to normal, and by use of new facilities if these are installed according to plan. The major uncertainty relates to the cost of coal per ton at the mine, and the charge for delivery by the railroads. It seems unlikely that this increase will be as heavy as in 1947 but it might well amount to 15-20 per cent. It does not seem safe to figure on less than a 20 per cent increase in fuel costs next year, although the increased availability of natural gas as boiler fuel may be moderately helpful.

It now appears almost inevitable that there will be a third round of "cost of living" wage increases, unless farm prices and food costs decline unexpectedly over the next month or so. However, there may be less deferred maintenance work next year as new equipment is installed, which will relieve labor costs slightly. A 10 per cent increase in salaries and wages would appear ample to take care of "cost of living" adjustments.

Other expenses, however, are showing a belated tendency to rise; September and October gains averaged about 23 per cent as compared with only 12 per cent for the twelve months ended September. While it is difficult to analyze this trend, it seems necessary to allow for a 20 per cent gain in this item for next year, because of the indicated lag.

IN depreciation and tax charges the utilities are now "getting a break." In October depreciation charges were up only 5.9 per cent, and taxes were almost exactly the same as in the year previous. Some utilities (Consolidated Edison, for example) are now lowering their depreciation accruals. It appears likely that an increase of 5 per cent in this item for next year, reflecting an increase of about that much in net plant account, should prove ample. While Congress' plans for tax reduction do not promise much corporate relief, we can probably leave the tax item "as is" for 1948.

The income from other services such as manufactured gas, transit, telephone, water, etc., was dealt a hard blow in 1947. Belated rate increases may help these services in 1948. However, in view of the lag it appears unsafe to figure any gain for this item. Miscellaneous income is also retained at the 1947 level.

Interest charges are now rising slowly but so long as so much construction is financed through bank loans, and amortization charges are an offsetting factor, not much adjustment appears necessary. An increase of 5 per cent for total income deductions would appear ample.

Our *pro forma* income statement for the twelve months ended September 30, 1948, as compared with the actual figures for the twelve months ended September 30, 1947 (all in round figures), would be as indicated in the accompanying table. The net result is an indicated decline of only about 1 per cent in net income. In

other words, the electric utility income statement appears sufficiently flexible to survive an additional dose of inflation, provided it is moderate.

We do not have space at this time to attempt a *pro forma* estimate for the natural gas industry, but it appears likely that these companies also will make a good showing in 1948. The demand for their product appears almost unlimited; they have no fuel problem; and their labor costs are lower in relation to gross than for the electric companies. In the twelve months ended October 30th the natural gas companies reporting to the Federal Power Commission showed a gain in net income of nearly 14 per cent over the previous period, and while pipeline construction is slow a gain of 10-15 per cent for next year would appear to be "in the cards."

It is difficult to offer any predictions for the telephone and transit companies until the size of 1948 wage demands is better known. In order to work out estimates it would be necessary to readjust latest 1947 figures to a *pro forma* basis (giving annual effect to present wages and service rates) and to go on from there. Because of the irregularity of state and local rate regulation and the varied timing of past or pending rate increases, it would be very difficult to work this out for the industry as a whole. However, even after allowance for some further wage advances in the spring, it appears likely that the telephone companies have already shown their worst monthly figures at some time in 1947, and that 1948 earnings may not be very far below the results for the calendar year 1947; the trend of maintenance expenditures may have a good deal to do with the result. The same is true of the transit companies, although here the results are still more irregular and each company must be studied "on its own."

Utility Financing Still Handicapped by Declining Markets

Utility companies are continuing their program for financing huge construction programs despite the heavy handicaps imposed by declining bond and stock prices. The bond market recently showed modest signs of recovery, but received a severe blow when Washington suddenly lowered its bids for government bonds. While the government seems confident that it will support long-term 2½s at par (the present bid is slightly higher), the suddenness of the recent de-

INCOME OF THE ELECTRIC UTILITIES FOR TWELVE-MONTH PERIODS ENDED SEPTEMBER 30TH
(IN MILLIONS)

	1947	*Est. 1948*	*% Increase*
Revenues	$3,574	$3,896	9%
Income from Other Departments	56	56	..
Miscellaneous Income	73	73	..
Total	$3,703	$4,025	9%
Deductions from Income			
Fuel	537	645	20%
Wages	706	777	10
Misc. Expenses	605	726	20
Depreciation	334	351	5
Taxes	634	634	..
Interest, etc.	240	252	5
	$3,056	$3,385	
Net Income	647	640	D1%

D—Decrease.

cision leads to some skepticism as to whether a par bid would be maintained under all future conditions. However, the Federal Reserve and the Treasury have tremendous buying power and resources, and can certainly maintain the market around current levels for some time if they wish to do so. Eventually, if credit demands continue unabated, they might have to reconsider.

While the stock market has staged a substantial rally in rail stocks, and industrials have firmed up, utilities still remain around the lowest level of the year. Despite these conditions, the following financing was tentatively scheduled for January:

Mortgage Bonds

$3,000,000	Pub. Ser. of N. H.	Jan. 5
8,000,000	Dayton P. & L.	Jan. 6
10,000,000	Northeastern Water Coll. Tr.	Jan. 12
40,000,000	So. Cal. Edison	Jan. 21
60,000,000	N.Y. Tel. Co.	Jan. 27

Preferred Stocks

$4,042,900	So. Caro. E. & G. Conv.	Jan. 5
1,000,000	Southwestern P. S.	Jan. 14

Common Stocks

139,739 shs.	Pub. Ser. of N. H.	Jan. 5
1,091,586 shs.	So. Caro. E. & G.	Jan. 5
450,000 shs.	Detroit Edison	Jan. 6
272,852 shs.	Gulf States Utilities	Jan. 7
103,113 shs.	Southwestern P. S.	Jan. 14

Utility Analyses by Wall Street Firms

HAROLD YOUNG of Eastman, Dillon & Co. has prepared a 6-page analysis of *Public Service of Colorado*. The stock has been selling at a lower price in relation to share earnings than most other utility stocks of comparable size and importance. With a recent price of 33 and earnings of $4.63, the price-earnings ratio was 7.1, as compared with ratios around 8-10 for stocks such as Columbus & Southern Ohio Electric, Dayton Power & Light, Florida Power, Gulf States Utilities, Public Service of Indiana, Southwestern Public Service, Utah Power & Light, Virginia Electric & Power, and Wisconsin Electric Power. The probable reason for the low price-earnings ratio, thinks Mr. Young, is the low dividend rate ($1.65), but he foresees a higher rate at some time in 1948 after property account adjustments have been completed. The company's earnings increased sharply in 1946 (almost doubling over the 1944-5 level) as a result of lower Federal taxes, and refunding savings also have improved the picture.

The company serves a diversified territory with good growth characteristics, and electric generating capacity is being increased. A second pipe line (recently completed) will insure an adequate supply of gas for all uses. (Gas in the past has furnished about one-third of revenues.) The company estimates that some 20,000 new gas-heating customers can be added in the foreseeable future, considering the sharp rise in the cost of coal and oil. It also will be able to use gas as boiler fuel in its electric plants during the summer months when gas demand is low.

The company serves a sizable part of the state, including Denver. While coal and other mining operations are important, the territory also includes irrigated farms, livestock areas, etc. Industrial revenues are somewhat below the national average in relation to total revenues. The company has a very satisfactory seasonal load factor, since increased mining activities in the summer, combined with the seasonal nature of irrigation and the tourist business, serve to balance the higher load for lighting in the winter.

The company has been fortunate in completing its refunding program earlier this year with the sale of 2¾ mortgage bonds, 3 per cent convertible debentures, and 4¼ per cent preferred stock. Each $100 debenture bond is convertible into three shares of common stock.

The company obtained a new 20-year franchise for both electric and gas operations in Denver last February (the referendum vote was about 8½ to 1 for the company), and other franchises have been renewed in the recent past. While

an electric rate reduction was made in connection with the franchise renewal, the increase in revenues has apparently been sufficient to absorb the rate cut.

Now that *Consolidated Electric & Gas* is retiring its publicly held preferred stock by exchange for Atlanta Gas Light common stock, there is renewed market interest in the bonds of the top holding company, *Central Public Utility*. These bonds now reflect what amounts to an equity interest in Consolidated Electric and its wholly owned subholding company, Islands Gas & Electric. Several studies have appeared in recent months which analyzed the value of the portfolio held by Consolidated Electric (which reflects the value back of the Central Public Utility 5½s after allowance for Consolidated's bank loan).

One of these analyses was prepared by Arthur I. Korn & Co. Mr. Korn applied a ratio of eight times the management-estimated earnings for 1947 to 1950, except for Central Indiana Gas Company, the value of which he based on expert testimony at the SEC hearing. His results are shown in the accompanying table. The estimated valuation of $18,058,000 is equivalent to $425 per bond, or an estimated price of 42½ as compared with the recent market price around 18. It is, of course, difficult to time the eventual breakup of the system and the realization of such an estimated value.

CONSOLIDATED ELECTRIC & GAS PORTFOLIO

	Management's Average Estimated Earnings 1947-1950	*Estimated Valuation*
Carolina Coach Co.	$397,000	$3,176,000
Southern Cities Ice	18,000	144,000
Porto Rico Gas & Coke	146,000	1,168,000
Santo Domingo Electric	621,000	4,968,000
Haiti Electric	169,000	1,352,000
Central Indiana Gas Co. (Annual Dividend $500,000, Annual Amortization $200,000)		7,150,000
Upper Peninsular Power (60% of the Equity)		2,000,000
Manila Gas Co. & Canary Island Subsidiaries (Estimated Recovery)		2,000,000
Tax Recoveries, etc.		2,000,000
		$23,958,000
Less one-year bank loan due Sept., 1948		5,900,000
Net for bondholders*		$18,058,000

* It is assumed that available cash will be sufficient to offset reorganization expenses.

Northern States Power Plan

In a 51-page findings and opinion the SEC recently reviewed the management plan for dissolving Northern States Power Company of Delaware, and ordered certain changes. While in the American & Foreign Power Case the commission recently ordered a larger share of the assets to be given the first preferred stockholders, in this case the amount allocated to the preferred stocks was reduced. Allocation of assets was changed as follows:

	Management Plan	*SEC Amended Plan*
7% Preferred Stock ..	43.83%	41.05%
6% Preferred Stock ..	39.45	36.94
Total to Pfd. Stock	83.28%	77.99%
Class A Com. Stock..	13.78%	18.82%
Class B Com. Stock..	2.94	3.19
Total to Com. Stock	16.72%	22.01%
Total	100.00%	100.00%

RECENT FINANCIAL DATA FOR GAS, TRANSIT, WATER, AND COMMUNICATIONS COMPANY STOCKS

		Recent Price	Yield	Earned	P-E Ratio
	Mfd. Gas Cos.—Retail				
O	Birmingham Gas (60¢)	11	5.5%	$0.83-s	13.3
C	Bridgeport Gas ($1.40)	23	6.1	1.72-d	13.4
O	Brockton Gas Lt. ($1)	14	7.1	1.12-d	12.5
S	Brooklyn Union Gas	16	—	Def.	—
O	Hartford Gas ($2)	37	5.4	2.38-d	15.5
O	Haverhill Gas Lt. ($1.60)	20	8.0	1.56-o	12.8
O	Jacksonville Gas ($1)	30	3.3	5.47-d	5.5
O	Providence Gas (60¢)	9	6.7	.55-d	16.4
O	South Atlantic Gas (65¢)	10	6.5	1.49-j	6.7
O	Springfield Gas Lt. ($1.60)	22	7.3	1.56-d	14.1
O	York County Gas ($2)	50	4.0	7.57-jy	6.6
	Averages		6.0%		11.7
	Natural Gas Cos.—Retail				
C	Arkansas Natural Gas	6	—	.39-d	15.4
O	Atlanta Gas Light ($1.20)	17	7.1	2.01-s	8.5
S	Columbia G. & E. (75¢)	12	6.3	1.36-s	8.8
C	Consol. Gas Util. (50¢)	9	5.6	1.13-jy	8.0
S	Consol. Natural Gas ($2)	49	4.1	4.49-s	10.9
O	Houston Natural Gas ($2)	48	4.2	3.58-j	13.4
O	Indiana Gas & Water ($1)	15	6.7	1.47-o	10.2
O	Kansas-Neb. Nat. Gas (80¢)	16	5.0	2.34-m	6.8
C	Lone Star Gas ($1)	21	4.8	1.72-s	12.2
O	Mission Oil ($2.10)	43	4.9	2.92-d	14.8
O	Mobile Gas Service ($1.40)	20	7.0	2.54-s	7.9
C	Montana-Dakota Util. (80¢)	12	6.7	1.27-d	9.5
C	National Fuel Gas (80¢)	12	6.7	.88-d	13.6
C	Okla. Natural Gas ($2)	34	5.9	3.46-o	9.8
S	Pacific Lighting ($3)	52	5.8	4.39-s	11.8
C	Pacific Pub. Ser. (80¢)	14	5.7	1.91-d	7.3
C	Rio Grande Valley Gas (5¢)	1¼	3.1	.15-d	11.7
O	Rockland Gas ($1.70)	25	6.8	3.30-d	7.6
O	Southern Union Gas (70¢)	23	3.0	1.15-j	20.0
O	Southwest Nat. Gas (20¢)	3½	5.7	.29-s	12.1
O	Texas Public Service ($1.20+Stk.)	19	6.3	2.22-o	8.6
C	United Gas ($1)	19	5.3	1.41-s	13.5
	Averages		5.6%		11.0
	Mixed Gas—Retail				
S	Laclede Gas Light (20¢)	5	4.0	.73-s	6.9
O	Minneapolis Gas Lt.	10[wd]	—	1.03-s	—
O	National Gas & Elec. (60¢)	9	6.7	1.24-d	7.3
S	Peoples Gas L. & C. ($5)	87	5.7	10.06-d	8.6
S	Washington Gas Lt. ($1.50)	20	7.5	1.36-s	14.7
	Averages		6.0%		9.4
	Natural Gas—Wholesale				
S	El Paso Nat. Gas ($2.40)	58	4.2%	4.82-o	12.0
O	Interstate Nat. Gas ($1.75)	20	8.8	1.70-d	11.8
C	Memphis Nat. Gas (25¢)	6	4.2	.80-o	7.5
O	Missouri Kansas P. L. ($1)	24	4.2	1.03-d	24.0
S	Northern Nat. Gas ($2)	28	7.1	3.43-s	8.4
S	Panhandle Eastern P. L. ($3)	55	5.5	4.35-s	12.6
S	Southern Nat. Gas ($1.50)	23	6.5	2.52-s	9.1
O	Southern Production	8½	—	.30-ap	28.5
O	Tenn. Gas Trans. ($1.40)	23	6.1	2.31-s	10.0
	Averages		5.8%		13.8

	Transit Companies	*Recent Price*	*Yield*	*Earned*	*P-E Ratio*
O	Baltimore Transit	3	—	Def.	—
O	Capital Transit ($2)	17	11.8	3.81-d	4.5
O	Chic. S. S. & S. B. ($1.10)	9	12.2	1.61-d	5.6
O	Cinn. St. Rwy. (60¢)	8	7.5	1.59-d	5.0
O	Dallas Ry. & Term. ($1.40)	14	10.0	3.31-o	4.2
O	Duluth Sup. Tran. ($1)	14	7.2	5.03-d	2.8
O	Kansas City Pub. Ser.	2	—	Def.	—
O	Los Angeles Transit (50¢)	5	10.0	.84-d	7.2
S	National City Lines ($1)	8	12.5	2.00-d	6.0
O	Phila. Trans. (80¢)	4	20.0	Def.	—
O	Rochester Transit ($1)	9	11.2	1.37-d	6.6
O	St. Louis Pub. Ser. A. ($1)	6½	15.4	1.01-d	6.4
O	Syracuse Transit ($3)	31	9.7	6.01-d	5.1
S	Third Ave. Transit	10	—	Def.	—
S	Twin City Rapid Tr.	7	—	Def.	—
O	United Transit	5	—	1.80-d	—
	Averages		11.6%		5.3
	Water Companies				
O	Elizabethtown Water ($6)	132	4.6	8.81-d	15.0
O	Federal Water & Gas ($1.20)	27	4.4	1.32-d	20.5
S	Hackensack Water ($1.70)	33	5.2	2.87-d	11.5
O	Indianapolis Water A (80¢)	20	4.0	1.98-d	10.1
O	Middlesex Water ($3)	63	4.8	4.93-d	12.8
O	New Haven Water ($3)	63	4.8	4.01-d	15.7
O	Northeastern Water	13	—	.47-s	—
O	Phila. & Sub. Water (80¢)	27	3.0	2.63-d	10.2
O	Plainfield Union Water ($4)	80	5.0	4.67-d	17.1
O	Stamford Water ($2)	52	3.8	2.22-d	23.4
	Averages		4.4%		15.1
	Water Companies—1946-7 Issues				
S	Amer. Water Works (60¢)	8¼	7.1	.79-j	10.8
O	California Water Ser. ($2)	28	7.1	2.66-o	10.5
O	Ohio Water Ser. ($1.50)	19	7.9	1.98-s	9.6
O	San Jose Water ($2)	33	6.1	2.79-o	11.8
O	Scranton-Spring Brook (70¢)	10	7.0	.91-s	11.0
O	West Virginia Water Ser. ($1.05)	16	6.6	1.38-s	11.6
	Averages		7.0%		10.9
	Communications Companies				
	Bell System				
S	American Tel. & Tel. ($9)	151	6.0	8.20-s	18.4
O	Cinn. & Sub. Bell Tel. ($4.50)	76	5.9	5.02-d	15.1
C	Mountain States T. & T. ($4)	97	4.1	3.02-s	32.1
C	New England Tel. ($4)	81	5.0	4.55-s	17.8
S	Pacific Tel. & Tel. ($2.60)	94	2.8	3.07-a	30.6
O	So. New England Tel. ($6)	117	5.1	6.59-d	17.8
	Averages		4.8%		22.0
	Independents				
C	Associated Tel. & Tel. A	7	—	Def.	—
S	General Telephone ($2)	28	7.1	2.25-s	12.4
C	Peninsular Tel. ($2.50)	43	4.4	5.53-d	8.2
O	Rochester Telephone (80¢)	11	6.7	.77-j	15.6

Def.—Deficit. wd—When distributed. C—Curb Exchange. O—Over counter or out-of-town exchange. S—N. Y. Stock Exchange. d—Dec. 1946. ap—April 1947. m—May 1947. j—June 1947. jy—July 1947. a—Aug. 1947. s—Sept. 1947. o—Oct. 1947.

What Others Think

How Tight Is the Nation's Power Supply?

In a studied and analytical paper, presented at the annual meeting of the Public Utilities Association of the Virginia's late in November, Philip Sporn, president of American Gas & Electric Service Corporation, of New York, examined in some detail the question of "The Power Situation — Present and Prospective."

Referring to the discussion which has appeared in the press about the status of the power situation—some views depicting the rosy side of the picture, while others painted it all in greys and blacks—he asked, "What are the facts? They are available readily enough to anyone who is looking for facts." He then sketched for his audience these background elements which have important bearing upon the present power situation:

> It is a fact, for example, that during the war the electric utility industry met all requirements for service imposed on it by an enormously expanded industrial system. Even more interesting is the fact that this was done with a precision and economy of means unmatched by any other branch of American industry. The basis for that statement is not my own judgment. I have personally heard Donald M. Nelson express that viewpoint when he was chairman of the War Production Board. Again it is a fact that it was necessary, in order to meet the expanded war loads, to build new capacity; such capacity, in the minimum amounts required, was authorized by the War Production Board. It is a fact also that the industry used a great deal of capacity that it was holding for reserve purposes, to a point where the reserves dropped to practically zero. . . . It is a fact that everybody thought that with the ending of the war there would be a drop in load and that as a result of that not only would margins of reserve be restored to normal values, but that there would be left an excess beyond that for growth and development of new load and building up of the load to the point that it reached during the peak of war production. That, however, was not expected to come until some time in 1948 or 1949.
>
> It is a well-known fact that this isn't the way things happened. After a short pause following VJ-Day, the load early in 1946 started to climb and it has as yet not let up. The consequence of that has been that whereas it was expected that the margins of reserves would be restored to a proper value immediately following VJ-Day, and that they would be maintained thereafter at that level, it has been necessary to stretch further even such limited margins as existed during the war. It is a well-known fact, too, that the electric manufacturing, steel, and other strikes which took place early in 1946, further clouded the horizon and failed to disclose the strength of expansion activity which was going on in all elements of the entire cross section of American industry. And this, too, resulted in a loss of time before the true state of affairs was recognized.

It was then pointed out by the speaker that despite all these factors in the situation it should be noted that "many, and perhaps all, utilities reversed their thinking early in 1946 and contrary to previous plans began projecting major expansions in generation, transmission, and distribution; from this course they have not swerved to this day." On the contrary, he continued,

> . . . most of them have more clearly developed their thinking and have in effect adopted a 5-year program of expansion aimed to bring the power situation under complete control: to establish a balance between capacity to serve and load, after taking care of all necessary margins of reserve, and even to provide a necessary margin for further growth and development.
>
> We are, therefore, today in the midst of what is probably the greatest period of expansion the power industry has ever experienced. During the war we became accustomed to dealing in such astronomical figures that it is difficult to realize the magnitude of what our industry is undertaking today unless one sits down and dispassionately surveys the situation.

From recent checkings of construction plans projected over the next five years, Mr. Sporn said it appears that the electric utility industry expects to add about 15,000,000 kilowatts of new system capacity, most of it having actually been committed for by the private utility companies. The expenditure involved will be upwards of $6,000,000,000. Mr. Sporn observed:

> Hence, I think it can be stated as a fact that barring some major disruptions in our industrial operations, particularly in such essential industries as coal, steel, electric, and other heavy machinery equipment industries, the power situation will come into a completely normal position by 1950 in most of the country and by 1951 in the entire country. Further, the industry will, without question, by that time, have resumed and intensified its historic policy of aggressively driving for new business, of working on the development of new applications of electricity, and in every way possible helping bring about throughout the entire country more complete electrification and electric living.
>
> But in between, that is between the period of the end of this year [1947] and perhaps the fall of 1950, there are going to be tight spots in capacity running from isolated situations to more extended areas, the degree and extent of which will be determined largely in some cases by the vigor of the present expansion cycle in American industry, in other cases by weather conditions which will determine the relative contribution of hydro resources to the power and energy picture of the area, and still in other cases by matters of pure chance such as those which determine the simultaneous occurrences of outages in major equipment.
>
> Because the electric power industry is operating, countrywide, with a margin of reserve in generating capacity below what is safe and below what the industry itself would provide if it could—the figure is actually down to around 5 per cent—the laws of chance will determine to a great extent not merely whether normal margins will be reduced but whether the reduction in such margins will make necessary actual curtailment or restrictions for limited periods and to more or less limited extents in various sections of the country.

As to the restrictions on service which have taken place, and which have been publicized in the press, Mr. Sporn called attention to the fact that "none of them have been either of a character or magnitude to cause any major concern initially and none have lasted for a long enough period of time to warrant any deep concern about the integrated effect that they would have either on industry or on general living conditions." In short, he said,

> . . . I think it may be safely stated that while the power supply situation in the United States is not in perfect shape, and while it is not in the condition that the industry would want it to be, it most certainly is not in any alarming condition and is well on the way to coming into perhaps the best condition it has been in in its history.

Commenting upon the reasons for the present state of the industry, the utility executive said that the extraordinary rise in demand for electric service since VJ-Day is the first reason. This has been brought about, he declared, by three basic causes:

> (a) The first of these is that during the war electrification showed the way to industry to greater production, and the favor it thus found is continuing, not only in industry but throughout our whole economy. To use a trite expression, the whole economy is more electrification conscious than ever.
>
> (b) The second of these causes is a corollary to the first; that is, the scarcity of labor for full production and the resulting premium on its services, both in industry and in the home. Greater production is the answer to the demands for higher wages now claimed by labor and electric powered machinery paves the way to this greater production. It is axiomatic that when the cost of labor for any operation increases to such a point where that operation cannot be continued at a profit, mechanization follows. Our industry is benefiting from this influence. In the home the disappearance of the domestic servant from most homes is forcing the greater use of labor-saving devices and appliances.
>
> (c) The third cause is the relative low price at which electric energy is sold. At a time when nearly all other prices have risen by 50 per cent or more, the price of electric energy is declining. More than ever, electric service is the lowest-cost service anyone can buy today; it is the outstanding bargain so to speak. This has stimulated demand and the effect has been apparent in all branches of service—industrial, commercial, and residential.

Obviously this unusual rise in demand, he stated, is "one of the reasons for the upset in the balance between supply and demand." A second reason for this unbalance, he said, is

. . . the spreading out of the delivery dates for major equipment not only turbines and transformers, but including also such other major equipment as boilers and switchgear, and even structural steel. The net result of all of these has been that whereas during the war, for example, it was possible to complete the construction of a brand-new power plant in eighteen months from the first excavation to the operation of the plant on a commercial basis, it is now necessary to allow a minimum of three and one-half years from the time of decision to proceed with construction until capacity can be expected on the line.

Taking up then the technical trends in the electric power industry, Mr. Sporn, drawing upon his broad experience in the engineering phases of the utility business, discussed the subject under the following five principal headings:

1. *Generating Equipment*—The new generating capacity installed will be mostly steam turbine driven. I can see no interruption in the continuation in the use of this prime mover. . . . For many reasons, but principally economic, turbine sizes are bound to go up and be designed to operate at higher steam temperatures and pressures than those now currently used. The price of coal for which no early decline is in sight and for which not even a leveling off at present prices is seen, will attend to that. . . .

2. *Boilers*—With turbine generating units becoming larger as I anticipate, in order to maintain the principle of unit design with one boiler and one turbine generator as a plant unit boilers must of necessity become larger. . . . During the coal strikes last year there was a great deal of talk about oil burning under boilers and there was some switching to the use of that fuel. It should not be forgotten, however, that coal is our basic fuel and boilers will continue to be designed for the use of that fuel. . . .

3. *Transmission*—A substantial portion of the money provided in the budgets of the utility companies in the next five years will have to be spent in augmenting transmission capacity by building either (a) more transmission lines at existing voltages, or (b) building higher transmission voltage lines or perhaps both. This will be required not only to handle the large increases in load that are expected, but also to bring system losses back to the more reasonable and economical level of prewar figures. . . .

4. *Distribution*—A large portion of the expected load increase comes from the customers served from the low voltage distribution system. Therefore, there must be considerable new construction of distribution plant as well as reconstruction. One way of increasing the capacity of the distribution system is to increase voltage. Although 8,000 volts may find some use, in most cases the jump will probably be to 12,000 volts.

UNDER the fifth heading — *Nuclear Energy*—Mr. Sporn quoted from a report which he completed in the late summer of 1945, in which he set forth certain conclusions he had arrived at "as to the implications that the development in nuclear energy had for the electric light and power industry." This subject being so important to the electric utility industry, Mr. Sporn's statement is given in full below:

The Implications for the Electric Light And Power Industry

It is obviously too soon to be able to tell precisely what effect the development of the atomic bomb will have on industry in general, and on the electric light and power industry, in particular. A great deal will depend on what program is adopted by Congress for following through this stupendous development, and the executive controls that will be set up to implement such legislation as may be enacted.

But a number of things seem quite clear and certain:

(a) Atomic energy will in all probability find industrial use in the relatively near future. A good estimate—perhaps that is over anticipatory—is that this will happen in the next ten to fifteen years. . . .

(b) The most probable utilization of atomic energy is as a source of heat. This may in turn be used to produce steam, or hot gases, for use in more or less conventional prime movers. On the other hand, it is not safe to assume that the prime movers will stay conventional. For example, the fact that a source of heat independent of combustion of fuel (and, what is even more important, fuel containing a large percentage of impurities such as sulphur, ash, etc.) may totally alter our concepts of what steam temperatures are possible.

(c) It does not look as if there is any modification in practice relating to planning, design, construction, and operation of power-generating facilities that can be introduced at the present time, or that should be introduced, that would not otherwise be adopted.

(d) The conclusions in (c) above do not apply to depreciation practice, particularly to depreciation relating to boiler plant and hydroelectric plant. It is entirely possible that rates of depreciation of boiler plant and of hydroelectric plant should be raised on most systems, bookwise and tax-wise. As to the latter, work

and discussion with the Bureau of Internal Revenue will of necessity be involved before any changes can be effected. . . .

(e) It would seem that coal may have its economic position as a source of energy seriously threatened within the next twenty to fifty years. Admittedly that threat is only faintly visible on the horizon. But it also definitely needs close scrutiny. Certainly until the whole question of the economics of atomic power is more clearly resolved, it would appear unwise to make commitments for coal reserves not exploitable within the next fifty years.

(f) The problems that the development of the atomic bomb to date, and the further development of atomic and nuclear energy, will create for the electric light and power industry in the future deserve further and more thorough study. This it is planned to do in a future report.

BRINGING this question up to the present time, Mr. Sporn made this pertinent comment upon the item of depreciation referred to above:

Examining these conclusions in the light of all the additional information that has come to light and the additional developments that have taken place since then, it appears to me that there is no occasion to alter the conclusions drawn at that time on any item with the exception of item (d) and that is relating to the question of depreciation.

Here it would appear to be clear now that the additional information that has come to light in the intervening two years provides very little warrant for a conclusion that rates of depreciation on such equipment as boiler plant or hydroelectric plant ought to be increased at the present time above what was considered proper two years ago. On the other hand, it would be a rash thing to say that the problem is settled and that the present rates are adequate for all time. It may very well be that developments which are not, however, immediately discernible on the horizon, may take place which will again force a reconsideration of the problem.

He then added this closing word on the subject of nuclear energy:

But it is clear to me at any rate that those charged with the task of determining whether or not to proceed, and whether or not they are safe in proceeding, with all the additional generating capacity that is now being added on the power systems of the country on the basis of practice considered technologically and economically sound before Hiroshima, have no reason to halt or alter their thinking as a result of any developments that have taken place since then.

To avoid any thought that his remarks were directed only to the optimistic outlook for the electric industry, the speaker referred to "The Clouds Upon the Horizon." He said:

. . . There are a number of such clouds and if not watched, and if proper measures are not taken to combat some of their effects, these could become serious. Principal among these are:

1. The rise in the cost of physical facilities. This is not an isolated phenomenon in the case of utility systems. It has happened to all industry in the country. Furthermore it is not entirely unexpected. We saw some evidence of it even while we were operating a controlled economy during the war. It was inevitable that as soon as controls were lifted —and as a matter of fact it would have happened if controls had not been lifted—costs would rise following the resumption of demand for goods on an unprecedented scale as a result of the destruction and the suppression of demand that took place during the war period. . . . The important thing to remember is that it appears clear that for every dollar of plant that we have installed and in operation today, we will be confronted with a need of $1.60 when replacement of that plant is involved and all extensions to that plant will be on a $1.60 basis. In an electric utiljty system where so much of the total cost of service comes about through the fixed charges route, that is a very serious item.

2. During the past fifteen years the electric utilities have been able to save substantially in capital costs because of declining interest rates on bonds, with the consequent decline in the cost of funds obtained both by preferred stock and common stock routes. This trend in cost of money has definitely reached an end and it is clear that funds to be raised by all three routes are going to be more expensive than they have been in the past. The problem is going to be aggravated by the competition which will exist between the utility industry and all other industry for new capital. . . .

3. Coupled as this is with either stationary or still somewhat declining rates, it is obvious that there is danger lurking in the background. The danger is not so much in the immediate present but rather in its long-term effect. The danger arises from the fact that eventually all the present plant account will have to be replaced with plant which will cost $1.60 for every dollar on the books.

4. The above really present a problem which is single in its impact and which could be stated thus: How to maintain earnings so as to be able to raise the capital needed for the expansion of facilities to meet the increases in demand for service at a much

higher level of cost that the industry is being confronted with today.

OBSERVING that the problem cited in (4) above is a difficult one, Mr. Sporn expressed the view that it is not beyond solution. The "past history of the electric industry and its enormous vitality indicate," he said, "that it can and I believe that it will be solved." He voiced the opinion that the solution will be found in resort to a number of techniques, and mentioned the expansion of volume, technical progress, and rate increases.

—R. S. C.

Utilities Prime Targets of Radical Violence

MORNING newspapers of November 29th carried a startling story on Italy's Chicago, the city of Milan, and that country's greatest industrial center. It appeared a little differently in each paper, but the story, compiled from UP and AP dispatches, went as follows:

> Thousands of Communist workers marched in military formation into the center of the city from the industrial suburbs early this morning. Prominent among them were Communist shock troops and Partisans, many of whom wore uniforms consisting of red blouses cut in Russian style. Some marched to the Federal building. . . . Others marched to the broadcasting station, telephone exchange, telegraph office, and other strategic points, all of which were invaded.

Among the other "strategic points" seized were local utilities and several factories "to protect the plants during the strike." The leftists had called a 12-hour strike starting at noon. The dispatches continued:

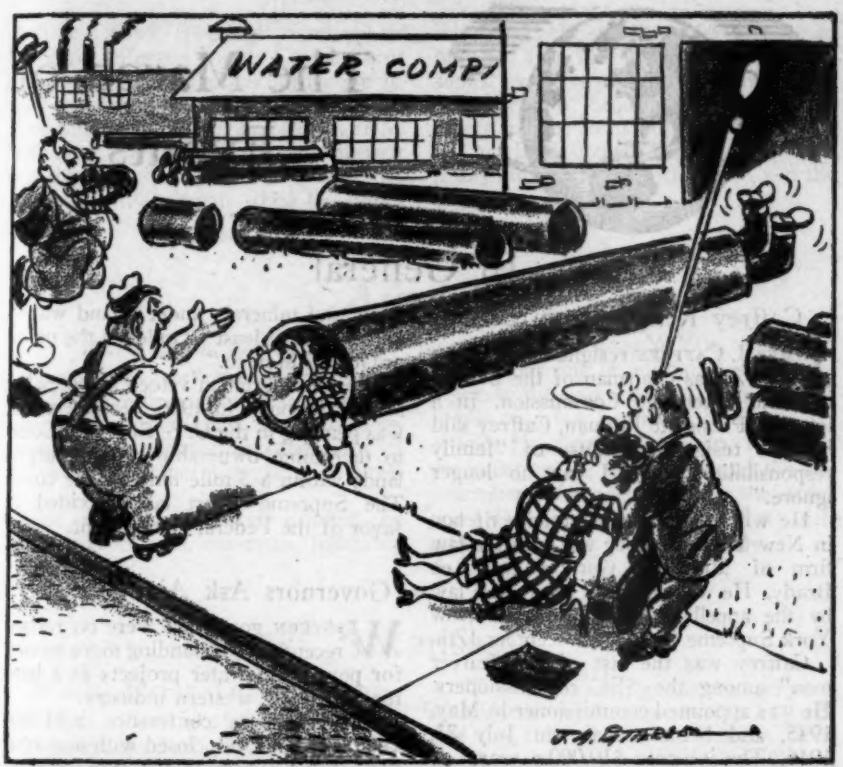
> The Milan police made no attempt to oppose the Communists as they marched into the city. Part of the police force seemed to be on their side. . . . The interior department at Rome ordered the army to take full control. . . . Army generals declined politely to act, however, on the ground that there was an almost total lack of disorder. . . . Police and carabineri with their rifle butts grounded, stood immobile while the occupation took place. . . . The leftist move, the boldest defiance yet of the De Gasperi government, was largely Communist-controlled and planned, but embraced the entire left wing. . . .

THE situation in Italy was not an isolated incident, its companion piece was being acted out in France, a country regarded as one of the western democracies. In the midst of a strike of two to four million men, members of 20 Communist-dominated unions, the cabinet summoned Parliament to meet. On November 29th the French Parliament acted on the government's demands for powers to enable it to cope with the spreading strikes. The demands agreed upon were:

> . . . Authorization to (1) mobilize certain public service workers; (2) take stern measures against sabotage, particularly of railroads, post offices, communications, and electric light plants; and (3) deal strictly with civil servants and employees of the nationalized railroads judged guilty of breaking discipline.

It matters little what the setting is, or the personalities, or how far the economy of a given country has deteriorated. The same potential situation was being dealt with in our own country. Ex-Representative Samuel B. Pettengill, the "gentleman from Indiana," recently went before an ABC network microphone in an attempt to rally support for the "loyalty program" and the hearings of the House Un-American Activities Committee. The President's loyalty program is designed to keep Communists and other subversive party members from key government positions. Pettengill cited the law on this subject:

> . . . Eight years ago, before the war broke out, Congress enacted "that it shall be unlawful for any person employed in any capacity by any agency of the Federal government (for example, a postman, or an Army officer) . . . to have membership in any political party or organization which advocates the overthrow of our constitutional form of government." I am sure you think that is a good law. You, as a taxpayer and loyal citizen have the right to insist that your



"OKAY, YOU AND HAPGOOD HAVE HAD ENOUGH FUN—NOW GET OUT OF THERE!"

government keep fifth columnists out of government offices, whether they are members of a German-American Bund, or the Communist party. That law makes it the duty of the employing official, whether a Cabinet member, or a postmaster, to ask and find out if the person seeking employment belongs to a "political party or organization which advocates the overthrow" of your government.

THE "gentleman from Indiana" noted that the citizen must declare his party in order to vote in a primary election. If he refuses, Pettengill states, he just won't be given a ballot. Another example is to be found in our naturalization laws which require an examination as to whether the applicant owes allegiance to a foreign government. Pettengill's principal point was the necessity to keep constantly in mind the fact that the Communist party is not an ordinary parliamentary-type party. It is not just another "democratic" party that happens to believe in government ownership of property, or the equal sharing of goods. It is a party that owes allegiance to a foreign government, he said, and to prove it he quoted from material compiled by the late Chief Justice Harlan F. Stone of the United States Supreme Court. The material is contained in an opinion entitled "The Statutes, Theses, and Conditions of Admission to the Communist International." In the opinion of the late Chief Justice "The aim of Communism is to destroy parliamentarianism." Thus, it repudiates the Republican form of government guaranteed by our Constitution.

The March of Events

In General

Caffrey Resigns from SEC

JAMES J. CAFFREY resigned on December 17th as chairman of the Securities and Exchange Commission. In a letter to President Truman, Caffrey said he was resigning because of "family responsibility which I can no longer ignore."

He will enter private practice of law in New York. Caffrey will join the law firm of Mortimer Gordon and Leo Brady. He was admitted to practice law by the appellate division of the New York Supreme Court on December 17th.

Caffrey was the last of the "career men" among the SEC commissioners. He was appointed commissioner in May, 1945, and became chairman July 23, 1946. The job pays $10,000 a year.

Tidelands Bill to Be Offered

REPRESENTATIVE Boykin, Democrat of Alabama, said recently that he would introduce a bill giving states "unquestionable title" to tidelands "the minute Congress reconvenes in January."

"I believe such a measure will have the endorsement of practically every state," Boykin told a reporter.

The Alabamian proposes to write into law the right of each state to claim all lands and minerals under inland waters and "out to at least 12 miles in the ocean or Gulf of Mexico."

President Truman vetoed a somewhat similar proposal in 1946, because a suit was pending in the U. S. Supreme Court to determine ownership of submerged lands within a 3-mile limit of the coast. The Supreme Court later decided in favor of the Federal government.

Governors Ask Aid to Power

WESTERN governors were on record recently as demanding more money for power and water projects as a base for expanding western industry.

The governors' conference, held last month in Portland, closed with a resolution asking Congress for supplemental power and reclamation appropriations immediately, and for regular appropriations large enough to develop projects systematically.

Such projects "could revise the whole industrial development of the entire West," declared Herbert B. Maw, Utah governor. Washington and California governors reported a serious power shortage in coastal states.

The next meeting was set for California in April.

Alabama

Must Set Franchise Election Date

CITY Attorney Edward L. Ball, after studying a decision handed down on December 18th by the state supreme court, said it was up to the Bessemer city commission now to set the date for an election on whether a 30-year franchise granted the Birmingham Gas Company

shall be voided. The high court upheld action of Jefferson County Circuit Court in dissolving a temporary injunction issued previously to prevent the city of Bessemer from holding an election on an ordinance granting the utility a 30-year franchise.

The litigation began when the utility claimed a petition asking for an election on the franchise ordinance was not signed by the required number of voters. The petition required 916 qualified voters' names to call the election.

The circuit court granted a temporary injunction, but dissolved it later, and the utility appealed.

Arizona

Rate Quiz Delayed

THE state corporation commission last month continued until a later date a hearing petitioned by Chino valley farmers in protesting existing rates of the Arizona Power Company of Prescott.

The adjournment was ordered by Wilson T. Wright, chairman, following a suggestion by Yale McFate, a member, that the hearing be continued until a decision by the state supreme court be made public on a law regarding rate basis.

Sam Head and Al Favour, attorneys representing the farmers, urged the adjournment of the hearing over the strenuous objections of Charles McDaniel, attorney for the power company.

Arkansas

Would Defer Tax Payment

CAPITAL TRANSPORTATION COMPANY asked the Little Rock city council finance committee recently for permission to defer all or part payment of its 1948 privilege tax, based on 5 per cent of gross receipts for 1947, until next July.

The entire amount, which President P. E. McChesney estimated would be $70,471, is due January 20th under terms of the transportation franchise approved last fall. Mr. McChesney explained that expenditures in connection with modernization of the transportation system have depleted cash reserves of the company.

"This is not saying that the company is unable to pay because we can and will pay the full amount on January 20th if the council cannot act favorably on this request," Mr. McChesney said. "If the city does not actually need the entire amount at that time, it will be of great help to us if we can defer it."

City Attorney T. J. Gentry advised committeemen that, while deferment might be open to attack on "strict legal interpretation" of franchise terms, a "gentlemen's agreement" probably could be worked out with consent of aldermen and city officials for delayed payment without formal amendment of the franchise ordinance.

Colorado

Utilities Director Picked

OFFICIAL appointment of Earl L. Mosley, former Colorado Springs city manager, to the newly created office of utilities was announced recently by Mayor Newton. Mosley's appointment

was effective January 1st, and he will be paid $8,000 a year.

Mayor Newton said that, since Mosley will work closely with the Denver city council, he had withheld appointment until the councilmen had agreed unanimously that Mosley should have the job.

Mosley will be charged with supervising all the city's relations with utility companies. He will assemble information to guide the city council in rate setting, franchises, utility taxes, and other matters. He also will safeguard the city's interests in relation to public roads outside the city and county but which affect Denver, Newton said. In addition, Mosley will be expected to develop information for the city administration on matters dealing with power development.

Power Vote Fought

A SUIT was on file in district court at Trinidad last month in an attempt by the Frontier Power Company of Trinidad to prevent a special election on January 6th on the question of a municipally owned light and power plant.

The company contended city officials, against whom the suit was directed, showed "gross abuse of discretion" in not obtaining expert advice on the power plant proposal before calling for the election.

The company also said city ordinances for the plant, approved early last month, were illegal.

The power company's franchise with the city expires in 1950.

Connecticut

Fare Boost Authorized

THE state public utilities commission last month authorized the New Britain Transportation Company, Inc., to increase its 5-cent fare to 6 cents, effective when the company files a tariff containing the new fare.

The company had asked permission to increase its existing fare from 5 cents to a fare of three tokens for 20 cents or a cash fare of 7 cents.

The commission, in its finding, noted that a salary of "not more than $5,000 a year should be allowed" to the company's superintendent of transportation. The commission noted "that the amount claimed by the company for this item of expense for the purpose of fixing rates," a salary of $8,060 a year for its superintendent of transportation, "is excessive."

The commission also said that the fare increase was granted because it found the company should be permitted a small fare increase to meet the costs of providing bus service and to afford a reasonable profit.

Florida

Dispute Legality of Act

ATTORNEYS of the Florida Power Corporation contended recently it would cost $100,000 to "tear up" its bookkeeping system to comply with the recent legislative act setting up the Pinellas County Utility Board.

S. E. Simmons of St. Petersburg, one of the attorneys, asked Federal Judge William J. Barker to declare the act unconstitutional because, Simmons maintained, it discriminated between the Florida Power Corporation, which sells only electricity, and companies selling gas and other utilities.

Simmons also said there was some doubt whether Congress, in passing the Federal Power Act, intended to have a county board regulate power transmitted in interstate channels. He explained

Florida has no statewide agency which could regulate utilities under the Federal act, and, if the measure passed by the state legislature last spring were held to be legal, each of the 28 counties served by the FPC could set up its own utility board and have a different form of regulation.

Georgia

Gas Rates Slashed

THE state public service commission last month ordered the Atlanta Gas Light Company to slash its rates $374,000.

Commission Chairman Walter R. McDonald said the order would bring about a $276,000 reduction in residential natural gas rates and would make available $98,000 in refunds to large industrial consumers who contract for interruptible service in 1948. He listed the cities affected by the reduction as Atlanta, Macon, Rome, Milledgeville, Griffin, Cedartown, Rockmart, Newnan, Marietta, East Point, College Park, Hapeville, Decatur, Forsyth, Barnesville, Thomaston, Carrollton, Smyrna, Gordon, and Calhoun.

The $276,000 annual saving to residential users was the second major reduction in the general natural gas rates in Georgia in almost a year. On December 31, 1946, the Atlanta Gas Light Company was required to make reductions of $795,000, of which approximately $520,000 accrued to home consumers.

The commission's chief engineer, Knowles Davis, had recommended that the commission prescribe penalty rates which would require the company to make refunds to customers when their service was interrupted after they had contracted for firm service. The commission, in ordering the gas company to make the refunds, said they should be made on the basis of the total use during the year 1947 and should represent the difference in what the customer paid for firm service and what he would have paid under the lower interruptible rate.

However, the commission said, no customer will be required to accept interruptible service along with the refund and the customers declining to accept the interruptible service will be given preference to the extent that all customers getting a lower interruptible rate must be interrupted before any customer on the higher firm rate can be deprived of service.

Kentucky

Won't Fight Fare Boost

THE city of Louisville "won't fight" a request for increases in streetcar and bus fares filed last month in Frankfort, Mayor E. Leland Taylor said recently.

The application, filed with the state public service commission by the Louisville Railway Company, seeks to boost fares in that city five-sixths of a cent by raising the price of tokens from two for 15 cents to three for 25 cents.

No change was sought in the 10-cent cash fare for single rides, but the company asked permission to increase the price of special tokens for school children from six for 25 cents to five for 25 cents.

Commenting on the application, Mayor Taylor said the city, through its constant check on the railway's operations, had known "for some time that the request for an increase in fares was coming." Although the city "won't fight

it," he went on, "we'll be on hand to see to it that they prove a rate increase is needed."

Utility's Plea Granted

AN opinion handed down last month by the Kentucky Court of Appeals granted a plea of the Kentucky Utilities Company that it have until February 5th to file a brief in its appeal from McCracken County Circuit Court's ruling that the city of Paducah purchase legally the KU electric plant there.

The city seeks to operate it with TVA power.

Maryland

Novel Legal Question

JUDGE John T. Tucker in circuit court at Baltimore recently was asked to pass on a novel legal question—whether the people's counsel of Maryland has a right to take an appeal from an order of the state public service commission.

The question was raised by counsel for the Consolidated Gas, Electric Light & Power Company and an assistant to the general counsel of the state commission.

The appeal was brought to the court by Philip H. Dorsey, Jr., people's counsel, from a commission ruling which approved new rates for electricity, gas, and steam heating filed by the utility company.

Mr. Dorsey contended that the commission erred in its method of arriving at the company's fair value for rate-making purposes. He also declared that the commission has permitted the company to earn a 9 per cent return on the unified rate base, when the return should not exceed 5¼ per cent.

In a demurrer to the appeal, counsel for the utility argued that the people's counsel is not a party in interest in the case.

Massachusetts

Files New Rate Provisions

BOSTON EDISON COMPANY has filed with the state public utilities department new provisions in its rates, by which the company would not provide electricity for resale after July 1, 1948, except as provided in a specific rate or under a contract filed with the department. The new provisions result from a department decision of October 31st dismissing a petition brought against it.

New sections provide no electricity for resale to any customer not engaged in resale on December 17, 1947, without commission approval; that until July 1, 1948, company will furnish to customers now engaged in resale, but only as now; and that after July 1st, next, it will not furnish electricity for resale except as provided in a specific rate, or under contract filed with the utilities department under existing law.

The department was told the company filed these new provisions to meet the requirements as laid down in the so-called Perry Case.

Minnesota

Dispute Again Goes to Governor

THE Northern States Power Company's jurisdictional dispute was certified to Governor Youngdahl on December 24th for the second time in an effort to settle union differences and end picketing of company property.

Leonard Johnson, state labor conciliator, turned the case over to the governor on petition of the company that 18 building trades unions be blanketed into proceedings before a special referee as provided by Minnesota law.

Missouri

Pass Price Boost Authorized

An increase of 25 cents in the sale price of weekly and special student bus passes issued by the St. Louis County Bus Company, which operates 13 bus lines in St. Louis county, was authorized last month by the state public service commission, effective at once. The increase was based on increased operating expenses.

The order permitted the company to increase the price of regular weekly passes from 75 cents to $1, and the price of special student weekly passes from 50 cents to 75 cents. The passes are good for rides in the first zone traveled on the company's lines.

It was estimated the increases would produce about $42,650 in additional revenue a year.

The commission held the increase was justified by increased operating expenses of the bus company, which had offset additional revenue obtained from a fare increase from 5 cents to 10 cents for the first zone of bus rides, granted last March.

Nebraska

City Appeals Fare Increase

The city of Lincoln, through its attorney, Max Kier, filed a motion for rehearing last month with the state railway commission in connection with the Lincoln City Lines fare increase.

In the motion Kier argued that the 5-cent fare is adequate to give the company a fair return on its investment and that the increase recently approved by the commission will give the company an excessive profit.

A motion for rehearing was filed by the city after the commission on November 7th issued an order authorizing the company to charge a cash fare of 7 cents or four tokens for 25 cents. The commission later dismissed this motion after authorizing the company to charge a cash fare of 10 cents or four tokens for 25 cents.

Kier contends that the valuation arrived at by the commission is excessive and that cost and tax factors were not taken into consideration.

If the commission again overrules the city's request for a rehearing, the city can then take the matter to the state supreme court for consideration.

Ohio

City Refuses to Pay Gas Bill

The city of Cincinnati, which already has appealed to the state supreme court from a state public utilities commission order increasing gas rates, followed up the challenge on December 16th by refusing to pay its bill to the Cincinnati Gas & Electric Company because it was based on rates fixed last October 20th.

City Manager W. R. Kellogg, in a letter to Walter C. Beckjord, president of the gas company, said the city solicitor had held that the city auditor did not

have authority to pay any gas bills "which reflect the charges imposed by the commission's unlawful emergency rate order of October 20th."

The gas company was asked to reissue its bills in accordance "with the legal rates prescribed by the general code of Ohio."

South Carolina

Power Sale Approval Reaffirmed

ITS order approving financing plans for purchase of the South Carolina Power Company of Charleston by South Carolina Electric & Gas of Columbia was reaffirmed on December 23rd by the South Carolina Public Service Commission.

Mayor W. McG. Morrison and State Senator O. T. Wallace of Charleston protested the commission's order approving South Carolina Electric & Gas' plan to borrow $6,200,000 from banks and to issue $6,000,000 in stock for the $10,200,000 purchase from Commonwealth & Southern.

Santee - Cooper, $60,000,000 state-fostered hydroelectric authority seeking also to buy South Carolina Power, and the state rural electric coöperative association also protested the sale.

Meanwhile South Carolina Electric & Gas stockholders indicated approval of plans to finance the purchase, a tabulation of votes and proxies at a meeting in Columbia on December 22nd showed. The meeting was adjourned pending state and Federal agency decisions.

Tennessee

Employees Given Wage Increases

A WAGE and cost-of-living increase for its employees was announced recently by the Tennessee Gas Transmission Company of Houston.

Monthly paid employees were given a cost-of-living increase of $15 monthly up to the $300 per month bracket, with a proportionate increase up to a maximum of $40 per month for salaries over that figure. Hourly paid field employees were given a 4-cent per hour wage increase and a 6-cent per hour cost-of-living increase. All increases were effective for the first quarter of 1948.

The company in December also issued a total of $265,000 in extra Christmas compensation checks to its employees.

Texas

Utility Awarded Franchise

THE United Gas Corporation was given a franchise on December 17th by the Galena Park city council to furnish gas to consumers in that city for a 10-year period. Residential and commercial rates will be those now charged in Houston, according to James A. Wilson, Houston manager of the company.

In furnishing gas to Galena Park consumers the United Gas Company agreed to pay the city of Galena Park 2 per cent of gross sales of all gas sold by the company within the city limits.

Houston residential users now pay a minimum of 58 cents for the first 400 cubic feet consumed; 60 cents per thousand cubic feet for the next 5,600 cubic feet; 55 cents per thousand for the next 10,000 cubic feet; and 45 cents per thousand cubic feet for all additional gas.

Progress of Regulation

State Has Power to Regulate Gas Pipe-line Sales to Industries

THE United States Supreme Court has upheld the ruling by the Indiana Supreme Court in Public Service Commission *v.* Panhandle Eastern Pipe Line Co. (1947) 67 PUR NS 129, that the state of Indiana may regulate sales of natural gas by an interstate pipe-line carrier direct to industrial consumers in Indiana. Neither the commerce clause of the Constitution nor the Natural Gas Act prevents such regulation.

Panhandle Eastern transports gas from the Southwest into and across intervening states, including Indiana, to Ohio and Michigan. It furnishes gas to local public utility distributing companies and municipalities for resale. Recently it has also sold gas in large amounts direct for industrial consumption.

The controlling issues, said the court, are two: (1) Has Congress, by enacting the Natural Gas Act, in effect forbidden states to regulate such sales; (2) if not, are those sales of such a nature that the commerce clause of its own force forbids the states to act? The court thought there could be no doubt of the answer to be given to each of these questions; namely, that the states are competent to regulate the sales.

The court, by decisions prior to enactment of the Natural Gas Act in 1938, had drawn a line between the area of permissible state control and that in which states could not intrude. The former included interstate direct sales to local consumers, and the latter included service interstate to local distributing companies for resale. States could regulate sales direct to consumers even though made by an interstate pipe-line carrier.

The purpose of the Natural Gas Act, the court continued, was to provide for Federal regulation of (1) transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale.

The omission of any reference to other sales—that is, to direct sales for consumptive use—in the affirmative declaration of coverage was not inadvertent. It was deliberate.

The unusual legislative precision, cutting sharply between sales for resale and direct sales for consumptive uses, said the court, was not employed with any view to relieving or exempting any segment of the industry from regulation.

The act, though extending Federal regulation, had no purpose or effect to cut down state power. In the words of Mr. Justice Rutledge, delivering the opinion of the court:

> On the contrary, perhaps its primary purpose was to aid in making state regulation effective, by adding the weight of Federal regulation to supplement and reinforce it in the gap created by the prior decisions. The act was drawn with meticulous regard for the continued exercise of state power, not to handicap or dilute it in any way.

In regard to an argument that Congress had occupied the field by enactment of the Natural Gas Act, the court said that Congress, it is true, occupied a field, but it was meticulous to take in only territory which the Supreme Court had held the states could not reach. That area did not include direct consumer sales, whether for industrial or other uses. *Panhandle Eastern Pipe Line Co. v. Public Service Commission of Indiana et al.*

Power Commission Asserts Authority to Disregard Contracts

PROVISIONS in contracts between companies subject to regulation under the Natural Gas Act are not inviolate against regulation by the Federal Power Commission. This declaration was made in an opinion by the commission relating to the limitation of natural gas supplied by Panhandle Eastern Pipe Line Company.

During an emergency gas shortage, said the commission, rate schedules on file with the commission to govern sales and deliveries of gas did not provide effective rules to govern and control deliveries and assure reasonable and nondiscriminatory services to utilities dependent upon the company. They were, therefore, unfair, unjust, unreasonable, and unduly discriminatory.

Contentions had been made that the commission lacked authority to prescribe emergency service rules which would change the terms of contracts with Panhandle or which would affect deliveries or quantities provided for in such contracts. These contracts had been filed as rate schedules under § 4 of the Natural Gas Act. The contentions were said to be without merit. The commission continued:

> The commission has full jurisdiction and authority to amend, alter, or modify any contract relating to Panhandle's obligations under the Natural Gas Act when such action becomes necessary to assure compliance with the provisions of that act. . . .
>
> The authority of the commission to prescribe the emergency rules and regulations as classifications, rules, regulations, or practices, in connection with a rate schedule, to prevent discrimination under § 5(a) of the Natural Gas Act, is fully sustained by the decision of the United States Supreme Court in the case of Interstate Commerce Commission *v.* Illinois Central R. Co. (1910) 215 US 452, where analogous authority of the Interstate Commerce Commission was brought into question.

Such contracts, said the commission, even though entered into before the Natural Gas Act was passed, are clearly subject to the provisions of that act and regulation by the commission in the public interest.

A penalty charge which was proposed in order to control gas use was viewed by the commission as involving an increase in rates. Therefore, under § 5(a) of the Natural Gas Act, the commission was prevented from ordering any such increase in the absence of the filing of a new schedule providing for the increase. *City of Detroit et al. v. Panhandle Eastern Pipe Line Co. et al. (Opinion No. 161, Docket Nos. G-200, G-207).*

Libel Charge Does Not Justify Court Entry into Dispute before Commission

THE Federal District Court for the District of Columbia dismissed an action by a radio corporation against the Federal Communications Commission in regard to a matter pending before the commission. The action apparently was based on a commission report which the radio corporation considered libelous.

The court pointed out that until all administrative remedies were exhausted it was without jurisdiction and added:

> I do not think the statutes relied upon by plaintiff lend any authority for such interference, even assuming, arguendo, that the commission acted erroneously in issuing the alleged libelous report. Courts cannot stand in constant watch and supervision over proceedings before governmental agencies to prevent some erroneous or wrongful action, any more than appellate tribunals can assume to control on the spot the actions of the trial courts. Practical considerations require that the aggrieved party go on with the case.
>
> If in the end it turns against him, he may resort to such methods of judicial review as the law allows.

Hearst Radio, Inc. v. Federal Communications Commission, 73 F Supp 308.

Water Service Inadequate and Competition Authorized

THE California commission allowed a water company to serve an area in which another utility had a protected monopoly for many years. The commission conceded that it had pursued a policy in the past of protecting from competition utilities rendering adequate service.

Findings were made as to the service being offered the public. These were summarized by the commission in this statement:

> The record herein clearly shows that Mr. Henry has not rendered efficient service, has not fulfilled the duties which a utility owes to the public, has not been reasonably diligent in endeavoring to comply with commission orders, and has not complied with such orders.
>
> Under these circumstances, the existing utility is not entitled to protection from competition.

The commission concluded that the public interest, which is the paramount consideration, would require that additional utility service be authorized. *Re Washington Water & Light Co. (Decision No. 40334, Application No. 28306).*

Combined Operation Supports Request For Merger Approval

TWO subsidiary motor carriers were authorized by the New York commission to transfer their certificates, franchises, consents, and properties to a parent corporation. Operations for all practical purposes had previously been consolidated.

The subsidiaries were entirely dependent on the parent corporation. They were using its equipment, garage facilities, its personnel and management.

Neither the public interest nor any useful purpose, said the commission, would be served by keeping the corporate organizations separate. The three companies were serving contiguous territory under common management, and a merger would probably result in greater efficiency and also some small saving. *Re Hill et al. (Cases 3142, 6989).*

Court Hears Power Act Infringement Suit

A MOTION to dismiss for lack of jurisdiction an action by a power company against a competitor for infringement of rights guaranteed under the Federal Power Act was dismissed by the United States District Court for South Dakota. The court ruled that by implication it had the necessary authority to entertain the suit in the absence of an adequate administrative remedy.

The Federal Power Act, the court stated, creates a statutory duty upon

those who deal in electric energy to purchase or sell it at the rate established under the act, and the company's failure to carry out its statutory duty was an adequate reason for taking the matter to court. *Montana-Dakota Utilities Co. v. Northwest Pub. Service Co. 73 F Supp 149.*

Court Reverses Commission Award of Certificate

THE Illinois Supreme Court reversed a lower court decision affirming commission action in awarding a certificate of convenience and necessity to a motor carrier. The court sent the matter back for further hearing chiefly on the ground that the commission failed to make findings of fact concerning issues presented.

The commission had authorized a competing motor carrier service after finding that the carrier serving the area was not capable of rendering satisfactory service. The court took issue with this finding and, in explaining its views, said:

> Chicago & West Towns has on hand the busses; it has additional busses ordered which will be available; it had a net profit of over $375,000 in 1943; and the testimony of the treasurer shows that the last date of the hearing they had over $250,000 cash in the bank. We hold that the finding that Chicago & West Towns is financially unable to furnish the service involved is against the manifest weight of the evidence, and not justified by law.

Chicago & W. T. Railways, Inc. et al. v. Illinois Commerce Commission et al. 74 NE2d 804.

City Taxicab Ordinance Held Unconstitutional

A PROSECUTION against a taxicab operator in New York was dismissed on motion by the city court of Utica. The cab driver was charged with violating a city ordinance against soliciting passengers at the railroad station while more than 10 feet from the cab.

The driver pointed out that his cab company had an exclusive contract with the railroad for the solicitation of passengers at the station. He argued that the ordinance was unconstitutional.

The court, in dismissing case, reviewed authorities on the subject and agreed with the cab driver that the ordinance would constitute a deprivation of property without due process of law. The court said:

> Defendant's first contention that the New York Central Railroad Company has a right to grant an exclusive franchise to tne Black & White Taxi Co. is unquestionably the law. The dominion which a railroad company has over its depot grounds is no less complete or exclusive than that which any owner of property has over his own property.

People, on Inf. of Gigliotti v. Humphreys, 73 NYS2d 393.

Rate Base Not Limited to Tax Value in Decision Changing Telephone Rates

THE Nebraska commission, in authorizing an increase in telephone rates, refused to limit the rate base to assessed value for taxation. Real estate assessments are determined by the various assessors in counties where a company operates. Personal property assessments are first returned by the company and sworn to by responsible officers. They show on their face that they are "assessable values."

In opposition to the proposed rate plan, subscribers who had been taken over by the Lincoln Telephone &

Telegraph Company when it acquired another company testified that it was their understanding that county-wide free service would be continued. No agreement was introduced with reference to the matter, and officials of the company denied the existence of any such agreement. In any event, said the commission, if such an agreement had been made, it would not deprive the commission of jurisdiction to determine the question. Neither could the commission interpret or enforce such a contract.

The added cost of providing so-called free service, the commission said further, should not be borne by all subscribers on an exchange where only a relatively small number use extended service.

Under the proposed rates, the return would range from 3.15 per cent on reproduction cost, less depreciation, to 6.49 per cent on cost, less depreciation, with intermediate percentage figures on other bases. A review of rates of return found to be fair and reasonable by courts and commissions in recent cases, said the commission, indicates a range from 5½ per cent to 6½ per cent. *Re Lincoln Telephone & Telegraph Co. (Application No. A-16831, Supplement No. 1).*

Gas Bills Must Show Consumption Instead of Therms

IT has been the policy of the New York commission to require gas schedules to set forth charges in cubic feet of gas consumed. But much can be said, according to the commission, in support of the theory that the schedule of rates should set forth charges on the basis of therms consumed.

The consumer, however, wants to be able to take his bill and compare the meter readings and to compute the amount owed, based upon such meter reading without having to convert by means of a conversion table the cubic foot consumption into therm consumption.

Gas meters register in cubic feet and do not register in therms. To obtain the consumption in therms it is necessary to know the average BTU content of gas supplied and convert the number of cubic feet shown on the meter into therms.

A proposed form of bill submitted by the company set forth the present meter reading, the previous meter reading in cubic feet, and the number of cubic feet consumed in the billing period. It set forth the gross amount of the bill and the net amount. Below was set forth the number of therms consumed. On the lower half of the bill was the following statement: "Gas bills are figured on the therms shown above, which are the number of 100 cubic feet registered on your meter, multiplied by 1.02."

Many consumers, it was observed, distrust conversion tables supplied by the company and want a more direct means of checking the bill. *Re Central New York Power Corp. (Case 12323).*

No Private Ownership of Waters of Navigable River

THE Federal Power Commission dismissed an application by the Niagara Falls Power Company for amendment of its license so as to exclude a provision that government acquisition of a power project under the Federal Power Act would be subject to certain water rights. The company was intending to acquire these rights for a cash consideration.

Approval of the change, said the commission, would be construed as an

implied approval of the claim that the so-called water rights were in existence, were valuable, and could be purchased.

Niagara river is a navigable water of the United States and an international boundary stream. In the opinion of the commission, no company could possess any lawful title to these water rights, for the reason that there cannot be private ownership of the waters of a navigable river of the United States.

The purported water rights, according to the company's contention, are founded on state law. This contention was said to be at variance with court rulings on the limitations of state rights.

Some point was made by the company that the alleged water rights attached to the water after it was diverted from the river, over which the United States admittedly has control. This, said the commission, is to suggest that while the United States may control actual diversion from the river, it has no authority to control the use of water so diverted. The commission said:

> This argument disregards the nature of the permission given by the United States to make any diversion of this navigable stream. Under the terms of the license the licensee is authorized to divert and use water from the Niagara river for power purposes solely through Project No. 16 . . . We do not regard the authority of the United States as being limited in the manner suggested by the licensee, nor do we recognize that the licensee would comply with the terms of the license if it did not use all of the diverted water through the facilities authorized as composing Project No. 16.

Re Niagara Falls Power Co. (Opinion No. 159, Project No. 16).

Accounting for Loss Resulting from Conversion to Natural Gas

PROPOSALS by the Washington Gas Light Company for property loss accounting resulting from conversion from mixed gas to natural gas were approved by the Federal Power Commission. Extraordinary property losses would result from facilities abandoned or to be abandoned. Two gas stations were being dismantled. The company proposed to charge the loss, subject to adjustments for salvage and removal expense, to Account 141, Extraordinary Property Losses. It would amortize such amount by charges to Account 506, Property Losses Chargeable to Operations, over a 10-year period.

Another gas plant was to be operated for a period not exceeding ten years. The company proposed to provide for accelerated depreciation in this case in an amount representing the original cost not provided for by accrued depreciation. It would charge this to Account 503.1, Depreciation.

Upon removal of the station from service it would charge the undepreciated balance, with adjustments for salvage and removal expense, to Account 141, Extraordinary Property Losses, and would amortize such balance by charges to Account 506, Property Losses Chargeable to Operations, over the remainder of the 10-year period. *Re Washington Gas Light Co.*

Water Taxi Is a Common Carrier

THE California commission, in investigating the operations of a water taxi company, determined that the service offered is that of a common carrier requiring commission approval. The commission pointed out that transportation by the carrier of passengers between shore points and ships at anchor for compensation constitutes a public utility service regardless of whether the ships are anchored within or outside of territorial limits.

The commission refrained from issuing a cease and desist order, as operations had already been discontinued and where there was no reason for resumption. *Re Garvin et al. (Decision No. 40296, Case No. 4850).*

Other Important Rulings

IN approving a gas and electric company's application for authority to issue shares of stock at par, the California commission ruled that the fact that the company's reported book value per share was in excess of par would not require that the shares be sold at more than par where its book figures did not coincide with rate base value used by the commission for rate-making purposes. *Re Pacific Gas & Electric Co. (Decision No. 40198, Application No. 28341).*

The California commission, in passing upon rival applications for motor carrier certificates, favored the carrier which pioneered in the area and was the first to seek the certificate, where both applicants showed ability to provide service in the public interest, and where authorization of both would result in overservice. *Re Asbury Rapid Transit System (Decision No. 40472, Application No. 28322).*

A motor carrier's application for a certificate was dismissed by the Colorado commission where the record showed no evidence other than that of the carrier that the area needed additional service while eleven competitors testified that the area was being adequately served. *Re Boyd (Application No. 8723, Decision No. 29390).*

The supreme court of Vermont granted a utility's application for a writ prohibiting a superior court judge from perpetuating the testimony of an officer of the corporation by deposition where there was no reasonable probability of loss of testimony by delay nor any valid reason to suppose that the witness and records would not be present at the trial. *Re Central Vermont Pub. Service Corp. 55 A2d 201.*

The merger of two public warehouse companies was authorized by the California commission where decreased overhead, tax savings, and greater business efficiency would result in better public service. *Re California Ice & Cold Storage Co. et al. (Decision No. 40298, Application No. 28324).*

The California commission in considering irrigation charges approved a higher rate for water used for lands improperly leveled and prepared, with the stated purpose being to discourage uneconomic use of water. *Re Sutter Butte Canal Co. (Decision No. 40254, Application No. 27950).*

The Georgia commission, in approving a rate schedule for rural dial telephone service which was substantially higher than for magneto service, commented that good dial telephone service requires a higher grade of construction and better maintenance of rural circuits than is necessary for magneto service. The commission added that it would insist as long as the present rates were in effect that good rural service be provided at all times. *Re B. Parker (File No. 19419, Docket No. 8675-A).*

The Virginia commission, on an application of rail carriers to raise freight rates in order to apply those permitted by the Interstate Commerce Commission, held that the state commission was not authorized by law to grant authority to publish or apply temporary rates on intrastate traffic, and, therefore, the application was dismissed. *Re Freight Rates and Charges (Case No. 9000).*

The Colorado commission, in considering the petition of railroads for a freight increase, refused to follow a deci-

sion of the Interstate Commerce Commission awarding an increase and ordered that an independent investigation be made. *Re Railway Freight Rates and Charges (Application No. 8746, Decision No. 29167).*

A motor carrier application for authority to transport general merchandise intrastate was denied by the Colorado commission where public need was not shown and common carriers in the area showed that the proposed service would be detrimental to their operations. *Re Redfield (Application No. 8744-PP, Decision No. 29389).*

In authorizing a municipality to construct a railroad grade crossing, the California commission stressed the fact that it is not the commission's province to consider the effect of such authority upon uses of the property not related to rail purposes. *Re Mill Valley (Decision No. 40122, Application No. 27965).*

It is the duty of the initial carrier, in the absence of shipper routing instructions, to forward shipments by the route giving the lowest combination of rates, according to the California commission; but the carrier's failure to do so does not, of itself, make the higher charges resulting from a less favorable routing unlawful. *Bressi & Bevanda, Constructors, Incorporated et al. v. Santa Fe & Western Pacific (Decision No. 40570, Case No. 4756).*

The supreme court of Utah set aside a commission order awarding a certificate of convenience and necessity to eight trucking concerns where the evidence in the record was insufficient to sustain commission findings that a public need existed for the services of a common carrier of sand, gravel, loose earth, and cement sufficient to justify placing eight new carriers in the field. *McCarthy et al. v. Public Service Commission et al. 184 P2d 220.*

Titles and Index

Preprints in This Issue of Cases to Appear in
PUBLIC UTILITIES REPORTS

TITLES

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IDAHO PUBLIC UTILITIES COMMISSION

Re Mountain States Telephone & Telegraph Company

Case No. F-1349 on rehearing, Order No. 1922
October 6, 1947

APPLICATION *by telephone company for increase in rates; emergency increase granted.*

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[AUGER, Commissioner, concurs in part.]

By the COMMISSION: This proceeding came on regularly to be heard by the full Commission on rehearing pursuant to the procedure set forth below.

On November 14, 1946, the Mountain States Telephone and Telegraph Company, hereinafter called the Company, filed its application, including schedule of proposed rates, for certain increases in exchange and intrastate toll rates, and requested that increases, if granted, be made effective as of January 1, 1947, as to toll rate changes, and effective as to exchange rates on billing dates on and after January 1, 1947.

On November 23, 1946, this Commission set said application for hearing on December 18, 1946, and issued due and legal notice thereof, all of which appears from the records and files of this Commission. In accordance with said notice, this matter came on for hearing in the office of the Commission at Boise on December 18, 1946, the entire Commission sitting. On January 10, 1947, the Commission, one Commissioner dissenting, entered its Order No. 1893, granting the application as filed, permitting the revised schedule of intrastate toll rates to become effective on January 11, 1947, and the revised schedule of exchange rates to become effective on the first billing dates subsequent to January 10, 1947. These billing dates occurred on January 11, 1947.

On January 31, 1947, the Idaho Falls Chamber of Commerce, through its duly authorized attorney, filed an application for rehearing in the above entitled matter, and on February 26, 1947, this Commission issued its Order No. 1899, granting the petition and setting the rehearing for April 29, 1947, in the State Capitol at Boise, Idaho. Later, on good cause shown, the hearing was postponed to May 27,

1947, at which time and place this matter came regularly on to be heard, pursuant to notice and order, Commissioners Auger, Joy, and Beamer sitting, the latter Commissioner having qualified as a Commissioner on January 13, 1947, and having thereafter made a thorough study of the transcript and exhibits in the original hearing in this case. The following appearances were made at the hearing on May 27, 1947:

Elmer L. Brock and J. H. Shepherd, Denver, Colorado, for the Company; Ralph L. Albaugh, Idaho Falls, for the Idaho Falls Chamber of Commerce, protestants; Maurice H. Greene, Boise, for Bert Decker, et al., as their interests might appear; Eli Weston, Boise, for the Idaho Potato and Onion Shippers Association, protestant; Robert E. Smylie, Assistant Attorney General, Boise, for the Commission, and for the state of Idaho; Richard E. Harper, Seattle, Washington, for the Commission; and, Rulon E. Larsen, Utilities Auditor, Boise, for the Commission.

Whereupon, the Commission proceeded with the hearing aforesaid for a period of three days, wherein a number of witnesses were called, sworn, and testified and were examined and cross-examined, and numerous exhibits, consisting of documentary evidence, were tendered and received by the Commission.

After tendering and receipt of such evidence, both oral and documentary, as aforesaid, all parties herein rested and the matter was submitted to this Commission for determination and decision. Briefs were filed by the Company and by the Commission and the Commission thereupon took the matter submitted under advisement.

The Commission now makes the following findings of fact:

The Public Utilities Commission of the state of Idaho has exclusive jurisdiction over all matters before it under the application herein and all the proceedings had pursuant thereto.

The Mountain States Telephone and Telegraph Company is a Colorado corporation with its principal office in Denver, Colorado, and operates a general telephone exchange and toll service in the states of Arizona, Colorado, Idaho, Montana, New Mexico, Utah, Wyoming, and El Paso county, Texas. The Company is qualified to do business in Idaho and its principal office in Idaho is located in Boise. The Company operates a general exchange and toll telephone business in that part of Idaho lying south of the Salmon river. The annual reports of the Company on file with this Commission, to and including December 31, 1946, show the true and correct condition of said Company and reflect the earnings, expenditures, and value thereof in so far as total Company operations are concerned, and the same are adopted and by reference incorporated herein and made a part hereof.

In 1920, in accordance with the provisions of § 59–402, Idaho Code Annotated, the Company filed with this Commission an inventory of all its physical properties within the state of Idaho, which inventory was subsequently approved in full by the Commission as the original valuation of the property of the Company used and useful in the public service. From this beginning the book value of the property has increased from year to

year in a progressive manner and in accordance with recognized accounting methods and the Uniform Classification of Accounts to a book value as of December 31, 1946, of $11,978,901. All computations and conclusions made herein are based upon company furnished information.

[1] Throughout this proceeding the Company has adopted a policy of computing and showing present return on average investment without giving consideration to accrued depreciation. The Commission will continue to adhere to its formula, which gives full effect to accrued depreciation in the establishment of a rate base for the purpose of fixing a rate of return.

As of November, 1946, the Company estimated that approval of the new schedule (Exhibit E in this record of proceedings) would result in increases of approximately $405,000 in Company revenue from exchange rates and $121,000 from intrastate toll rates, a total of approximately $526,000 per year. The increase in toll rates would be limited to tolls for calls over distances from 1 to 121 miles. From that point (121 miles) the schedule provided for a reduction, resulting as a matter of fact, in bringing the intrastate toll rates over the longer distances to more comparable position with reference to existing interstate rates. Therefore, the estimated increase of $121,000 represents the estimated net increase in intrastate toll and, in fact, passes to the lower mileage group any decreases effected in the higher mileage group. It is here merely noted that the disparity heretofore existing between intrastate and interstate toll rates in the mileage bracket of 1 to 121 miles is thereby increased and made more disproportionate; a disparity which this Commission believes should be the subject of serious study by the Company.

[2] The rehearing, taking into consideration as it does the full year of 1946, permits the Commission to arrive at more accurate conclusions as to 1946 than was possible from the evidence and exhibits of the December hearing, limited as that record was to a fraction of that year. It is the opinion of this Commission that not much reliance can be placed upon statistics based on a quarter or fractional period of a year in a determination of a rate of return necessarily extended into the unforeseeable future. This is well exemplified by the admitted necessity of making adjustments in the fourth quarter 1946 figures affecting all quarters of that year, and thereby rendering Company's Exhibit No. 26 in the December hearing inaccurate in its presentation of the relationship between net operating earnings and average investment.

This Commission is not prepared to accept a single annual period as a basis of final and conclusive judgment of a fair rate of return, a position fully justified by an examination of Commission's Exhibit No. 54. This exhibit shows an average rate of return over a 20-year period of 5.28 per cent, reaching a peak of 7.01 per cent in 1939 and a low of 2.18 per cent in 1933; and a precipitous decline from about 6.5 per cent in 1931 to 2.18 per cent in 1933. Even if annual trends were always indicative of the future, an entirely different conclusion would have to be drawn from the continued sharp trend downward in 1933, which sharply reversed itself in 1934. In

contrast to this deflationary period of 1932–1933, as illustrated by Exhibit 54, the evidence in this case shows a present high inflationary period extending from the latter part of 1945 to the present time and into the immediately foreseeable future. Projecting our study to March, 1947, the first full month that reflects the complete impact of the new rates, we find a net operating income of $55,000. This sum raised to an annual basis indicates an annual net operating income in excess of $660,000, which, as will be shown, is far in excess of a fair return. This fact, likewise, is not sufficient evidence on which to base conclusions for the year 1947. Obviously, therefore, the shorter the period contained in any trend study, the less reliable are the conclusions to be drawn therefrom.

The Company has set forth its intended expansion program over the next five years, the reasons which it believes explain the declining rate of return, and its alleged need for an increase in order to maintain its credit for the purpose of attracting capital with which to expand its investment and improve its service.

[3] To the extent that the expansion program involves additional capital investment, a rate of return cannot be considered or allowed on such investment prior to the time of actual dedication of the new facilities to the public service. While the record indicates a declining rate of return, it also indicates that factors other than increased operating expenses contribute to this result. The increased demand for service is admittedly unprecedented and far beyond the expectations of the Company. This has resulted in degrading the Company's service and in its inability to meet tremendous demand for new service, with the consequent loss of revenue. It must be herein observed that while the Company has emphasized increased expenses, actual and prospective, it has made no attempt to estimate the additional revenues that will result by rendering the quality and quantity of service now demanded by the public. Adequate service is a statutory requirement and a prerequisite of fair return. (Section 59–302, Idaho Code Annotated.) However, the conclusion is inescapable that the attainment of such service will result in material increases in revenue, enhancing the financial standing of the Company as a whole. There appears to be no cause for alarm in this respect when it is recalled that as recently as June, 1946, a refunding operation reduced bond interest from 3¼ per cent to 2⅝ per cent with a substantial premium to the Company on a new $35,000,000 bond issue.

The monthly averages of held orders for phone service disclosed by the record are as follows:

Average number of held orders per month for 1945	5,108
Average number of held orders per month for ten months period, 1946	3,261
Total number of held orders as of March 31, 1947	5,971

Therefore, the held orders as of March 31, 1947, exceeded the monthly average for the entire period of more than two years, and, as a matter of fact, the entire history of the Company. In spite of the addition of 19,089 phones for the statistical period, unfilled orders as of August 31, 1947, total 7,385. Of this total, 5,491 involve outside plant construction.

These facts are contained in a recent report submitted to the Commission by the Company, of which the Commission takes notice, and which by reference is incorporated herein and made a part hereof.

The continuing large increase in number of phones and the unfilled demand point to two conclusions so far as Company's future operations are concerned: (1) That future revenues of the Company will show substantial increase; (2) That operating expenses will be unusually large during this period of abnormal plant expansion.

While the increased revenues in all probability will be of a permanent nature, the unusual expenses incident to this construction and particularly those occurring due to deferred maintenance, will be, by their very nature, of comparatively short duration. Unfortunately, this postwar program of "bringing the service up to Company standards" encounters an inflationary period of extreme proportions and unpredictable duration. Plant construction, however, as previously stated, is not considered from the standpoint of rate of return until such time as it in fact becomes used and useful property in the public service.

The Company freely admits that there is much public dissatisfaction with the quality of service now being rendered to its subscribers and that the service now being rendered does not meet Company standards. While the service furnished may be in some respects not "adequate, efficient, just, and reasonable" the defects in service are in the process of correction by the Company. There is reason to believe, although the rehearing in this case indicated little progress in this direction, that the Company's program can be relied on, for the purposes of the order, to restore the furnished service to that degree of adequacy which is demanded by our law. This development when it has fully matured should also reflect an increase in the revenue derived from the then used and useful plant.

In its Order No. 1893, the Commission found:

"That from uncontroverted statistical evidence adduced by applicant, it appears that: (1) The number of Company telephones in Idaho has increased from 28,741 in 1923 to an estimated 72,543 (actual 72,581, and as of March 31, 1947, 74,640) at the end of 1946, giving some indication of the improvement in the intrinsic value of the service over a period of the last twenty-three years; (2) In the year 1946 alone, 13,225 telephones were added, exceeding the number gained in 1941 by nearly four and one-half times; (3) Nevertheless, at the end of October, 1946, the Company still held 4,397 unfilled applications for telephone service; (4) Comparing the average calls per day for the year 1945 with the average calls per day for the month of September, 1946, the average originating local calls per day increased from 290,000 to 383,000, and toll messages increased from 3,500,000 for the year 1945 to 4,200,000 for the year 1946".

Taking the figures presented in Company Exhibits Nos. 2, 8, and 12, the following calculations are made:

Average local calls per day, 1925 ...	148,174
Company telephones in service, 1925	29,828
Average calls per telephone per day	4.9
Average local calls per day, March 31, 1947	394,944
Company telephones in service, March 31, 1947	74,640
Average calls per telephone per day	5.3

The average number of calls per telephone per day over a period of more than twenty-two years has therefore increased by less than ½ call. The average utilization of local service has remained practically stationary. The increase in number of phones, however great, is not a measure of increased value to the user.

These conclusions are reinforced by the following figures, likewise taken from Company Exhibits, Nos. 2, 8, and 12:

Toll messages originating in Idaho in 1923	1,092,665
Number of phones in use in Idaho in 1923	28,741
Average toll messages per phone, per month	3¾
Toll messages originating in Idaho in 1946	4,121,427
Number of phones in use in Idaho in 1946	72,581
Average toll messages per phone, per month	4¾

It thus appears that certain of the statistics set forth in the above-quoted portion of our order were misleading in some details.

Reference in the record to the fact that the Company has received no appreciable rate increase since 1927 appears to merit passing notice. Under §§ 59–526 to 529, inclusive, of the Idaho Public Utilities Regulatory Act, a telephone corporation, electrical corporation, and water corporation enjoy a public monopoly of the territory served, a privilege granted no other class of utilities now operating in this state, except a gas corporation, of which but one remains. While the Commission might well take note of the historic line of rate reductions since 1927, it is more pertinent to here point out from the record in this case that during the 3-year period of 1931–1933, co-incident with a drop in the rate of return from 6.8 per cent to 2.18 per cent, the Mountain States Company suffered a net loss of telephones in service of approximately 8,168. A fair conclusion for that particular period would therefore be that the rates were prohibitive to more than one-fifth of the total number of subscribers, operated to the detriment of the Company, and that a rate reduction at that time might well have increased the net operating profit of the Company.

[4, 5] The Company has departed from the usual and customary method of fixing exchange rates on the basis of classification of exchanges according to number of stations in each exchange. Such a schedule, where the division lines are well defined between each graduation, avoids the statutory prohibition of discrimination on the Company advanced theory that as the number of stations in any exchange increases, the value and the cost of the service is increased. The schedule under immediate consideration has, however, incorporated a new and unique overlapping of numbers as between groups as shown below, definitely raising the question of discrimination. Section 59–315, Idaho Code Annotated, reads as follows:

"No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disad-

vantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service. The Commission shall have the power to determine any question of fact arising under this section."

The following is the classification of exchanges contained in Exhibit E:

		Business			Residence		
		1-Party	2-Party	4-Party	1-Party	2-Party	4-Party
I	From 1 to 250	4.00	3.50	...	2.50	2.25	2.00
II	From 200 to 500	4.50	4.00	...	2.50	2.25	2.00
III	From 400 to 800	5.00	4.25	...	2.75	2.25	2.00
IV	From 700 to 1,500	5.50	4.50	...	2.75	2.25	2.00
V	From 1,400 to 4,000	6.00	5.00	4.50	3.00	2.50	2.00
VI	From 3,700 to 7,000	6.50	5.50	4.50	3.25	2.75	2.25

Exception must be taken to this schedule in so far as the numbering system within the groups is concerned. Under such an overlapping system it is possible, and, in fact, it has already occurred, that exchanges falling within the limits of Group I are placed in Group II because they exceed the lower limit of the higher group. Further, it is possible under such a schedule to have two exchanges with exactly the same number of stations assigned to different groups and paying different rates for precisely the same service. This possibility readily becomes reality with such a system of overlapping schedules having in common a range of 50 stations that would come within either the first or second group, 100 stations between the second and third groups, third and fourth, fourth and fifth, and common ground of 300 stations between the fifth and sixth groups. Thus the basic Company theory of higher rates as a measure of higher value incident to increased number of stations is compromised, and abandoned in so far as the overlapping intermediate areas are concerned.

This schedule as it now stands is discriminating in that it establishes and maintains unreasonable difference as to rates as between classes of service, and as such violates the provisions of § 59–315 (*supra*). It is the opinion of this Commission that the following numbering system is more equitable, more clearly defined as between groups, and will be approved.

		Business			Residence		
		1-Party	2-Party	4-Party	1-Party	2-Party	4-Party
I	From 1 to 200	4.00	3.50	...	2.50	2.25	2.00
II	From 200 to 400	4.50	4.00	...	2.50	2.25	2.00
III	From 400 to 700	5.00	4.25	...	2.75	2.25	2.00
IV	From 700 to 1,400	5.50	4.50	4.50	2.75	2.25	2.00
V	From 1,400 to 4,000	6.00	5.00	4.50	3.00	2.50	2.00
VI	From 4,000 to 7,000	6.50	5.50	5.00	3.25	2.75	2.25

[6] In conclusion, with reference to Exhibit E, from information furnished by the Company, we find that as of the time of original filing of classified groups, assignment to the various groups was made on the basis of actual number of stations plus deferred applications. The Company's explanation of such inclusion beyond the number of actual stations at the time of filing was anticipation on their part that the exchanges would actually attain

the higher numbers by the time the schedule became effective. It is the opinion of this Commission that only the actual number of stations contained in any exchange at the time of filing should be the basis of group classification. The Commission will order that Exhibit E in this record be amended to conform to the classification numbering system for exchanges set forth above, and that in computing the applicable classification for any exchange only those telephones actually in service on the exchange be considered.

The conclusions of this Commission, in so far as the year 1946 is concerned, are shown in the following tabulations.

MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY

Revised Rate of Return—1946

Idaho

Rate Base		
Fixed Capital, 1/1/46	$10,956,425.00	
Fixed Capital, 12/31/46	11,978,901.00	$22,935,326.00
Average for Year		11,467,663.00
Working Capital		
One Month's Average Operating Expense	$363,158.00	
Material and Supplies	188,426.00	
	551,584.00	
Less One Month's Average Exchange Revenue	177,305.00	
Total Working Capital		$374,279.00
Total Fixed Capital and Working Capital		$11,841,942.00
Less Apportioned Depreciation Reserve		$3,947,429.00
Rate Base		$7,894,513.00
Net Operating Income as Reported	$330,837.00	
Adjustments:		
Income Tax Saving on Refinancing	48,720.00	
Income Tax Paid for A. T. & T. Co.	12,000.00	
Total Net Operating Income Plus Adjustments	$391,557.00	
Less Pension Accruals from Account 323	12,842.99	
Adjusted Net Operating Income		$378,714.01
Rate of Return for 1946		4.8%
Allowing a Reasonable Rate of Return on Above Calculated Rate Base—5¼%	$7,894,513.00	$434,198.00
Increase Required to Produce 5¼% on 1946 Operations		$78,797.28

MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY

Revenue Requirements

Existing Capital Structure	Investment	Revenue Requirements
Common Stock 6%	$57,564,300.00	$3,453,858.00
Bonds 2¾%—40 years	35,000,000.00	918,750.00
A. T. & T. 2¾%	7,250,000.00	199,375.00
Amortization on Cost of Financing		5,573.00
Revenue Requirements		$4,577,556.00
Apportionment to Idaho		
Fixed Capital—1946 Average for Idaho	$11,967,778.00	
Fixed Capital—1946 Average for System	149,263,645.00	
Ratio	8.0178%	
Revenue Requirements from Idaho		$367,019.00
Fair Return on Idaho Rate Base		$434,198.00
Available for Surplus from Idaho		$67,179.00

While the finding of the Commission in the above "Revised Rate of Return—1946" speaks for itself, three individual items of that finding, about which considerable controversy and testimony centered, should be given brief explanation.

1. *Deduction of one month's average exchange revenue from working capital.*

[7] The Company maintains that monthly exchange revenues are not, in fact, collected one month in advance of due date because of the extended period required by the billing cycle and the lapse of time between mailing and receipt of payment. While this is doubtless true, the Commission is of the opinion that collections are, in fact, made a month in advance of the time they otherwise would be made where the same cycle starts a month later, or at due date.

2. *Adjustment of income tax saving on refinancing.*

[8] The redemption of a bond issue by the Company resulted in the Company paying $609,000 less income tax than it otherwise would have paid. The Idaho portion of this saving to the Company, amounting to approximately $48,720, was included as an item in Idaho expenses. The item never accrued as income tax, was never paid as income tax, and should not, therefore, be reflected as an item of expense.

3. *Income tax paid for American Telephone and Telegraph Co.*

[9] Testimony showed inclusion of an item of $12,000 for income tax paid for the American Telephone and Telegraph Company in a breakdown of the 1½ per cent fee under the license contract. While the Commission does not object to charges for legitimate service performed under and pursuant to this contract with the American Telephone and Telegraph Company, this particular item appears to us to be an improper charge in the expenses of the Idaho operations of the Mountain States Company, and should properly be regarded as an expense item of the American Company.

Considerable space in the record is devoted to the "separation study" conducted jointly by the Federal Communications Commission, the National Association of Railroad and Utilities Commissioners, and the American Telephone and Telegraph Company, and was referred to in counsel's brief. It is our understanding that all details of this proposal have not yet been worked out. Whether or not this Commission will adopt the plan of separation of interstate and intrastate revenues and expenses finally proposed cannot be determined at this time. The method used in the above "revised rate of return" is that heretofore employed by this Commission and, in the judgment of the Commission, is fair, equitable, and in accordance with law.

[10] While the evidence in this case, both oral and documentary, terminates with the first full quarter of 1947, no satisfactory conclusion is possible without taking notice of certain facts which have occurred subsequent to that time. In the second quarter of 1947, the Company was confronted with a labor strike of about six weeks' duration, terminating in a settlement involving substantial increase in wages. During this period of unsettlement revenues declined sharply followed by substantial increases in op-

erating expense due to wage increases. The Commission has had the benefit of examination of the monthly operating reports of the Company, which are incorporated herein and made a part hereof by reference. Considering these reports and the other unusual factors heretofore mentioned, some of which may prove to be of a nonrecurring character, it is the opinion of the Commission that the year 1947, as developed in the statistics available up to this time, does not afford a sound basis for determining the questions here involved in a final and conclusive manner. The Commission is of the opinion that the Company is subject to factors having immediate impact on its expenses although there appears reason to believe that these same factors will cease to be effective when the Company's expansion program emerges from the high inflationary cycle it has encountered. For these reasons the situation under examination in this proceeding has a definitely emergency character and is therefore treated as an emergent circumstance.

The rates approved herein are estimated to produce an increase of revenue to the Company approximating $526,000. This increase in revenue, extended and applied to the rate base of the Company as of the close of business on December 31, 1946 ($7,894,513), would have produced a rate of return of 8.27 per cent. This rate applied to 1946 business would have been, in the Commission's opinion, clearly exorbitant. However, the factors arising since the termination of the 1946 accounting period, notably strikes and wage increases, the high inflationary cycle encountered by the Company expansion program, with its attendant tendency to increase operation costs, make it almost impossible to apply 1946 experience to a rate structure projected into the future. We believe that these factors justify the increased rates as an immediate measure. However, the economic factors now bearing on the Company's operations are temporary in nature and many of them will dissipate or disappear as the construction program develops and the economic situation crystallizes. For that reason the year 1946 and the portion of 1947 under examination, in our opinion, do not provide a sound basis on which to erect a permanent structure of rates greatly increasing the burden on the ratepayer. The condition of the Company and the economic circumstances currently prevailing are emergent in character and for that reason seem to us to require emergent treatment. Reëxamination of the rate structure in the light of less troublesome economics may well vary the results had in this proceeding. For that reason we regard continued reëxamination of the rates as a necessary corollary to the relief herein afforded to the Company.

Pursuant to the foregoing the Commission now makes the following order:

It is hereby *ordered* that Order No. 1893 heretofore issued herein be, and the same is hereby, rescinded, from and after the thirty days hereinafter provided.

It is *further ordered* that the Company file with this Commission not later than thirty days from the filing of this order an amended exchange rate tariff, which said tariff shall adjust its classification of exchanges to make such classification conform to the views

set forth in this order; and that exchanges be classified therein on the basis of telephones actually in service on the exchange.

It is *further ordered* that the classification of exchanges for the purpose of establishing exchange rates, as amended in accordance with the terms of this order, be placed in effect and the rates therein specified are hereby declared to be justified and shall be applied to exchange service in each of the exchanges served by the Company in this state on the first billing date subsequent to January 1, 1948, subject to all the other terms of this order; that each of such exchanges so classified remain in that classification for a period of not less than six months; that when, because of an increase or decrease in the number of stations attached to an exchange, such exchange becomes eligible for a different classification, either higher or lower, and has remained so eligible for a period of six months, the Company shall petition this Commission for a change in such classification in accordance with the rules of the Commission. Such petition shall be made in the same manner and form as an application for an increase or decrease of exchange rates for the exchange concerned.

It is *further ordered* that the intrastate toll rates set out in the attachment hereto are approved and the same shall remain in effect, subject to all the other terms of this order.

It is *further ordered* that the toll tariffs and exchange tariffs approved herein be, and the same hereby are, approved as emergency tariffs only and such tariffs shall not be effective from and after the first billing date in January, 1949, as to exchange tariffs and January 1, 1949, as to toll tariffs, or from and after such further order of this Commission, whichever date shall be earlier.

AUGER, Commissioner, concurring in part: As I do not concur in or accept all the inferences of fact, deductions, and predictions contained in the preamble to the foregoing order as emanating from the evidence in this proceeding, and also sincerely doubt the integrity of a formula establishing a diminishing rate base in effect (a ghost which was said to be buried in the Hope Natural Gas Case by the United States Supreme Court [1944] 320 US 591, 88 L ed 333, 51 PUR NS 193, 64 S Ct 281, and the body now seeking birth in the foregoing holdings), in view of the substantial relief afforded, and the inadvisability of debating at the time of fire itself the proper or most appropriate method of controlling a fire and alleviating its resulting distress, akin to the emergent relief sought herein, I concur in the second, third, and fourth paragraphs of the order itself as distinguished from the preamble, reserving statement until time of freedom from stress.

Re Public Service Company of Indiana, Incorporated

No. 19520
Amended Order September 25, 1947

PETITION *by electric utility for authority to construct, own, and operate additional electric utility facilities; granted.*

Monopoly and competition, § 54.1 — Company versus coöperative — Public interest.

1. The essential determination which the Commission must make in a proceeding to determine whether a public utility company should be permitted to serve an area within the franchise area of a rural electric coöperative is how the public interest will best be served, p. 51.

Certificates of convenience and necessity, § 88 — What constitutes necessity.

2. The convenience and necessity which must be shown by an applicant for authority to render electric service is the convenience and necessity of the public as distinguished from that of an individual or any number of individuals and from that of the corporations or individuals applying for or opposing the application, p. 51.

Monopoly and competition, § 54 — Electric utilities — Division of service — Public convenience.

3. Public convenience and necessity require that any division of service between electric utilities within a single community be avoided wherever possible, p. 51.

Certificates of convenience and necessity, § 102 — Electric utilities.

4. Public interest will best be served if a housing project area located on the outskirts of a town is served by the same utility which has a franchise right to serve the town, so that the rights for, rates for, and standards of electric service will be uniform throughout the area, p. 52.

APPEARANCES: Edmond W. Hebel and Charles W. Campbell, Attorneys, Indianapolis, for petitioner; Ewing E. Wright, Attorney, Osgood, and Davis, Baltzell, Hartsock & Dongus, by Harvey B. Hartsock, Attorney, Indianapolis, for respondent, Southeastern Indiana Rural Electric Membership Corporation; Davis, Baltzell, Hartsock & Dongus, by Harvey B. Hartsock, Attorney, Indianapolis, for respondent, Indiana Statewide Rural Electric Cooperative, Inc.; Robert E. Jones, Assistant Public Counsellor, Indianapolis, for the public.

By the COMMISSION—Bailey, Examiner: On May 15, 1947, Public Service Company of Indiana, Inc. (hereinafter called "Petitioner"), an Indiana corporation, filed with the

Commission its verified petition wherein it prayed for an order by this Commission (i) declaring that public convenience and necessity require the construction, ownership, operation, management, and control by Petitioner of electric lines and facilities within an area (hereinafter called the "Housing Project Area") consisting of 19.30 acres located immediately adjacent to and on the southwest side of the town of Versailles, Ripley county, Indiana (hereinafter called "Versailles"), and (ii) making such other and further orders in the premises as the Commission may deem appropriate and proper.

Said petition was docketed as Cause No. 19520 of this Commission. Pursuant to notice of hearing published and mailed to interested parties as provided for by law, a public hearing was convened and commenced in the rooms of this Commission, 401 State House, Indianapolis, Indiana, at 10 o'clock, A. M., central daylight saving time, on Tuesday, July 8, 1947. Said hearing, not being completed on said date, the same was adjourned to reconvene at the same place at 10 o'clock, A. M., central daylight saving time, on Friday, July 11, 1947. On said last-mentioned date, said hearing was completed. At said hearing appearances on behalf of Petitioner, the public, respondent Southeastern Indiana Rural Electric Membership Corporation (hereinafter called "Southeastern REMC") and respondent Indiana Statewide Rural Electric Cooperative, Inc. (hereinafter called "Statewide REC") were entered as above noted.

During the hearing oral testimony was given under oath by witnesses called by Petitioner and by witnesses called by the respondents. During the hearings Petitioner identified certain documents as Petitioner's Exhibits numbered 1 to 14, both inclusive, and offered the same in evidence. All said documents were admitted in evidence. During said hearings, respondents identified certain documents as Respondent's Exhibits letter A (parts 1 and 2), B (parts 1 and 2), C (parts 1, 2, 3, 4), D (parts 1 and 2), E, F, and G, and offered the same in evidence. All said documents were so admitted.

During the hearings all the parties to this proceeding stipulated on the record that either Petitioner or Southeastern REMC had the financial ability to provide the necessary facilities to serve electricity to the Housing Project Area; and also stipulated on the record matters showing the respective effective dates of the articles of incorporation and amendments thereto of Statewide REC and Southeastern REMC, which articles and amendments had been introduced in evidence as exhibits in this cause.

The Commission, having heard and considered all the evidence presented in this cause and being fully advised in the premises, finds that the material allegations of said verified petition are true and have been proved.

The Commission further finds from the evidence that Petitioner is an Indiana corporation organized under The Indiana General Corporation Act; has its principal business office in the city of Indianapolis, Indiana; is a public utility engaged in rendering electric utility service in municipalities and rural areas in the north central, central, and southern parts of the state of Indiana and has rendered such service for many years; and is subject to the

jurisdiction of the Commission in the manner and to the extent provided by the laws of the state of Indiana.

The Commission further finds from the evidence that Southeastern REMC has its general office in the town of Osgood, Indiana; that Statewide REC has its general office in the city of Indianapolis, Indiana; that each of said respondents is a coöperative organization created under the Rural Electric Membership Corporation Act (hereinafter, as amended, called the "REMC Act"); that Statewide REC is a general district corporation and the area comprising the Housing Project Area is included in territory described in its articles of incorporation; that Southeastern REMC is a local district corporation and the aforesaid area is included in the territory described in its articles of incorporation as territory in which it has authority to render electric service to its members; and that said coöperative organization has lawful authority to supply electric service only to persons who become and remain members thereof.

The Commission further finds from the evidence that Petitioner renders electric distribution service as a public utility within and to Versailles, a town of approximately 600 inhabitants; that such service is rendered under a franchise granted on April 16, 1945, by Versailles to William Smith, who at said date and for many years prior thereto had operated electric distribution service in Versailles; that said franchise, among other things, grants to the holder thereof "an indeterminate permit, franchise, right, and privilege to have, place, erect, construct, install, replace, renew, repair, maintain, extend, and operate, in, along, upon and under any and all of the public highways, streets, and alleys within the municipality (i. e. Versailles) within its present and future corporate limits" electric facilities "for the purpose of supplying and furnishing electric energy to the municipality and the inhabitants thereof;" that the ordinance granting said franchise contains a provision that said franchise shall not be construed as giving to the grantee thereof, or his successors or assigns, the right to serve electric energy as a public utility in the Housing Project Area unless and until a declaration of public convenience and necessity be procured from this Commission as provided in § 18 of the REMC Act; and that Petitioner, pursuant to authorization granted by the Commission in and by its order entered in Cause No. 17070 on June 13, 1945, purchased from said William Smith on July 2, 1945, the electric utility property and rights (including the aforesaid franchise) now being used by petitioner in and in connection with rendering electric utility service in Versailles.

The Commission further finds from the evidence that about 1942 the Federal government established a housing project known as the "John Paul Homes Project," in the Housing Project Area; that at the time of the establishment of such project the Housing Project Area was outside of but immediately adjacent to the corporate limits of Versailles; that as a condition for the placing of such project within the area adjacent to Versailles, the Federal government required that Versailles accept the Housing Project Area as a part of the incorporated town to the end that municipal services that the Federal government requested be

made available would be available on a basis comparable to those in the other parts of Versailles; that the Housing Project Area was brought within the corporate limits of Versailles; that homes were constructed in such area by the Federal government for 100 families and approximately such number of families now reside within such area; that the business area of Versailles is all located outside the Housing Project Area; and that there are approximately 200 families and businesses within Versailles, but outside the Housing Project Area, who are receiving electric utility service from petitioner.

The Commission further finds from the evidence that as a part of the construction of said housing project, the Federal government built therein an electric distribution system to supply electricity to the homes in said project; that it has at all times since the construction of such facilities owned and operated the same and supplied electric service to its tenants in the Housing Project Area at flat rates fixed by it; that as a part of its said operations, it supplied street lighting in said area; that the electric energy so supplied has at all times been purchased at wholesale by the government from Southeastern REMC at rates that Southeastern REMC has never placed on file with this Commission; that the annual gross revenue of Southeastern REMC from such sales have been between $2,400 and $3,000; that said electric energy so supplied the government has at all times been obtained by Southeastern REMC through the purchases at wholesale from petitioner; and that during the construction of said housing project Southeastern REMC furnished electric energy to the contractor doing the construction work.

The Commission further finds from the evidence that, in carrying on its activities in the Housing Project Area, the Federal government has been and is acting by and through its agency known as the Federal Public Housing Authority; that said agency is now engaged on behalf of the Federal government in disposing of the government's interest in said housing project, and to that end (a) has disposed of part of the housing units in the Housing Project Area (b) has conveyed the water and sewage facilities to Versailles, and (c) has announced, by sending forms of bid and general conditions of sale to Southeastern REMC and to petitioner, that it intends to sell the electric distribution system and street lighting facilities located within the Housing Project Area; and that, upon the consummation of such sale, the Federal government will cease to engage in the business of distributing electric energy to consumers, and it will therefore be necessary for the persons within the Housing Project Area to obtain electric service directly from some other source.

The Commission further finds from the evidence that petitioner is ready, able and willing to render electric public utility service to all consumers residing within Versailles, including those within the Housing Project Area; that petitioner is seeking to purchase from the Federal government the existing electric facilities within the Housing Project Area, and, if the same be acquired, petitioner will, subject to procuring the necessary authority from this Commission, use the

same to render such electric public utility service in the Housing Project Area; that, if such facilities cannot be so purchased, then Petitioner is ready, willing, and able to construct such electric distribution and street lighting facilities in the Housing Project Area as are necessary in order to render therein adequate electric public utility service; and that petitioner is financially able to make from time to time, and will make if granted a declaration of convenience and necessity by this Commission, such additions, extensions, and improvements in said electric distribution facilities as may be required in order to provide adequate electric utility service to all present users therein and for all persons therein hereafter seeking electric utility service.

The Commission further finds from the evidence that neither Statewide REC nor Southeastern REMC has given its written consent to the granting by the Commission of the declaration prayed for by petitioner; that Statewide REC and Southeastern REMC are opposing the granting of such declaration; and that no corporation formed or admitted to do business under the REMC Act (other than Statewide REC and Southeastern REMC) is at this time, and no other corporation or any public utility is at this time by any former approval, declaration, or franchise by this Commission, authorized to serve the Housing Project Area or any part thereof.

The Commission further finds from the evidence that Southeastern REMC has a 3-phase transmission line running along the north side of the Housing Project Area, and single-phase lines running along the east and west sides of the Housing Project Area; that none of said lines were built for the purpose of serving the Housing Project Area, but were, prior to the Federal government's program for said project, constructed for the purpose of providing electric energy to the farm families in the areas in which the coöperative service of Southeastern REMC was to be available; that, prior to the development of the housing project, there were no users of electric energy in the Housing Project Area except one farm user who was supplied with electric energy by Southeastern REMC; that said farm user is now located outside of Versailles and south of the Housing Project Area and is being supplied electric energy by Southeastern REMC, and service to him is not involved in this proceeding.

The Commission further finds from the evidence that the Housing Project Area is no longer farm or rural area territory, but is an integral part of Versailles and within its corporate limits; that there are no farm families, as such term is used in the REMC Act, residing within the Housing Project Area; that, if a declaration of public convenience and necessity be granted petitioner by the Commission, there will be made available to users (including the municipal authority) in the Housing Project Area electric public utility service which will be rendered at the same rates and conditions of service as are from time to time applicable to electric users located in the other areas of Versailles; that Southeastern REMC is authorized by law to supply electric service only on a coöperative basis to persons who become members thereof and assume the obligations of such membership; that un-

der the articles of incorporation and bylaws of Southeastern REMC a membership fee of $5 is required to be paid by each person becoming a member; that the basis on which rates for service are to be fixed is, under the provisions of the REMC Act, substantially different than the basis provided for under the Public Service Commission Act in the case of public utilities; and that the governmental regulatory control in respect of service and the adequacy thereof is, under the applicable statutes, substantially greater in the case of public utilities than it is in the case of coöperative organizations functioning under the REMC Act.

The Commission further finds from the evidence that the president of the board of trustees of Versailles and the town attorney for Versailles have testified in these proceedings that, in their judgment, the best interests of Versailles will be served if there is available throughout the entire area of Versailles electric public utility service by the petitioner which is the holder of the franchise granted by Versailles; that, prior to the filing of the petition in this cause, representatives of 80 of the 100 families residing in the Housing Project Area and representatives of 136 of the approximately 187 families residing in Versailles in areas outside the Housing Project Area expressed in written petitions, prepared and circulated by petitioner, the view that electric public utility service by petitioner should be made available throughout the entire corporate limits of Versailles; that shortly prior to the hearing in this cause, Southeastern REMC circulated in Versailles respective petitions, which counsel for Southeastern REMC testified he had prepared, wherein it was requested that the declaration sought by petitioner in this cause be denied; that petitions circulated by Southeastern REMC were signed (a) by sixty-two persons residing in the Housing Project Area, who had signed a petition circulated by petitioner and who in the petition circulated by Southeastern REMC asked the withdrawal of their names from the earlier petition, and (b) by twenty-one persons residing in the Housing Project Area who had not signed a petition circulated by petitioner; that petitions circulated by Southeastern REMC were signed (i) by seventy-nine persons residing in Versailles but outside the Housing Project Area who had signed the petition circulated by Petitioner and who in the petition circulated by Southeastern REMC asked a withdrawal of their names from the earlier petition (including two signers who specifically noted that they did not join in the request for the denial of a declaration to petitioner), and (ii) by twenty-nine persons residing in Versailles but outside the Housing Project Area, who had not signed a petition circulated by petitioner; that evidence introduced by Southeastern REMC shows that some of the persons signing the petitions circulated by petitioner in the Housing Project Area were under the impression, from statements claimed to have been made by a representative of petitioner, that Southeastern REMC could not in any event distribute electric energy in the Housing Project Area and that such understanding influenced them in signing the petition; that the petitions submitted by Southeastern REMC for signatures refer to Southeastern REMC continuing "to serve electrical energy

in and to the residents" of the Housing Project Area,—although the evidence shows clearly and Southeastern REMC admits that the Federal government has at all times served electrical energy in and to the residents of the housing project and that the existing method of service will not continue to be available because of the disposition program of the Federal government; that the persons soliciting signatures on the petitions circulated by Southeastern REMC did not advise the persons solicited as to the membership requirements in case of service by Southeastern REMC or as to the differences in regulatory control in the case of a public utility service and in the case of service by a cooperative organization under the REMC Act; and that, so far as appears from the evidence, the signatories on the various petitions did not have knowledge of and did not give consideration to such factors.

The Commission further finds from the evidence that the rates under which petitioner or Southeastern REMC supply electric energy in the Housing Project Area are subject to the jurisdiction of this Commission, but the provisions of the REMC Act fix a basis for establishing rates which is different than that in the case of public utilities; that under present general residential schedules, consumers using between 0 and 200 kilowatt hours a month would get the same from 50 cents to 2 cents cheaper if purchasing from petitioner than if purchasing from Southeastern REMC; that, under such schedules, consumers of more more than 200 kilowatt hours per month would get the same cheaper if purchasing from Southeastern REMC, such difference being 8 cents for 200 kilowatt hours and increasing thereafter; that the average monthly use per residential customer in Versailles, exclusive of the Housing Project Area, is about 67 kilowatt hours, at which consumption the rates of petitioner provide a charge about 30 cents lower than the Southeastern REMC rate; that the average monthly use of all members of the Southeastern REMC is about 90 kilowatt hours; and that in the Housing Project Area, where the energy is not now metered to the customers, the average use is estimated at about 179 kilowatt hours a month.

[1, 2] The essential determination, which the Commission must make in this case, is that of how the public interest will best be served. It is the need, welfare, and convenience of the public, and what is best fitted or suited to meeting the same, that must be the predominant consideration by the Commission in exercising the regulatory responsibility that the legislature has placed upon it in such a case as this. Public good and convenience is the yardstick to be applied in determining the advisability of granting or denying the declaration sought. The convenience and necessity which is required is the convenience and necessity of the public, as distinguished from that of an individual or any number of individuals and from that of the corporations or individuals applying for or opposing the declaration sought.

[3] The Commission has before it here a situation in which the Federal government is disposing of its interest and operations in a war housing project. Determination must now be made as to the supplying of electric service

to the residents within such project area. The facts show that such project area is within the corporate limits of a municipal corporation in which electric public utility service is now being rendered by petitioner. Except for the fact that this area—then rural farm land—was included in an extensive description of territory in the charter of a rural electric membership corporation, the obligation to supply electric public utility service in the Housing Project Area, and the privilege of each resident thereof to have such public utility service, would clearly exist without any action by the Commission. Petitioner is ready and willing to supply such public utility service if it be permitted so to do. The alternative is that a section of Versailles would be deprived of the right to public utility service and that persons from time to time residing therein will be placed in a different position in this respect than the residents of other parts of the town. This situation is one which, barring exceptional circumstances, the Commission strongly believes it is not in the public interest to have exist; and in the judgment of the Commission public convenience and necessity require that such a division of service within a single community be avoided, if possible. No circumstances appear in this case which would justify a refusal to permit the making of public utility electric service available to everyone within the corporate limits of the town.

Apparently Southeastern REMC opposes the granting of the declaration of public convenience and necessity to petitioner upon the ground that a certificate of public convenience and necessity for the REMC to operate in the territory has been granted to it by this Commission and that before this Commission makes a declaration that public convenience and necessity require some one other than the REMC to furnish electric energy in the territory, proof of such convenience and necessity should be made to this Commission in proceedings provided in § 18-b of the REMC Act.

[4] The Commission finds, after considering all the evidence in this cause, that the public interest will be best served if electric utility service is rendered to the Housing Project Area by a public utility and by the same company that has a franchise right to supply electric public utility service in Versailles and a present obligation to render such service in all parts of Versailles other than the Housing Project Area, in order that the rights for, rates for, and standards of service for electric energy will be uniform throughout Versailles; that public convenience and necessity require the construction, ownership, operation, management, and control by petitioner of electric lines and facilities within the Housing Project Area; and that a declaration of convenience and necessity to construct, own, operate, manage, and control electric lines and facilities within the Housing Project Area should be issued to petitioner: and it will be so *ordered.*

NEW YORK SUPREME COURT, SPECIAL TERM, ALBANY COUNTY

Rochester Gas & Electric Corporation

v.

Milo R. Maltbie et al.

— Misc —, 73 NYS2d 377
September 27, 1947

MOTION *by Commission to dismiss proceeding by gas and electric company to review determination in regard to issuance of stocks and bonds, and motion by holding company for right to intervene; motion to dismiss denied and intervention permitted.*

Procedure, § 10 — Motion to dismiss for insufficiency.

1. Allegations in a petition must be deemed to be true for the purpose of ruling on a motion to dismiss for insufficiency, so that, if taken as true, the petition states a cause of action and the motion must be denied, p. 54.

Security issues, § 129 — Request for authority — Right to final determination.

2. A utility applying to the Commission for authorization and approval of a plan for the sale of its stock is entitled to a determination either granting or denying its application, and the fact that, in the process of considering the application, negotiations were had on advisory matters did not deprive the utility of the right to an ultimate determination, p. 58.

Security issues, § 129 — Advisory resolution — Imposition of conditions — Final determination.

3. An advisory resolution by the Commission that a proposed plan for stock issuance, as amended by earlier advisory resolutions, would be acceptable only if certain new conditions are met, is in effect a denial of the petition for approval and may be considered a final determination, p. 58.

Appeal and review, § 9 — What constitutes a final determination — Commission resolution.

4. A utility may bring a proceeding to review a Commission decision as a final determination where, after a Commission resolution in regard to stock issuance has been made, the utility applies for a rehearing and states that its application is contingent on the resolution being considered a final determination and the Commission simply denies the application, p. 58.

Appeal and review, § 9 — Commission determination — Requirement of finality.

5. A Commission determination to be reviewable must be final but need not take any particular form, p. 59.

Appeal and review, § 80 — Intervention of holding company — Corporation stock proceedings.

6. A holding company which is the sole common stockholder of a corporation making application to the Commission for authority to issue additional

stock and bonds, which application, in effect, has been denied by the Commission, has such a special interest in the litigation as would entitle it to intervene in a proceeding to review the Commission determination, p. 59.

Security issues, § 112 — Commission approval — Difficulties incident to competitive bidding rule.

Statement that under the competitive bidding system of disposing of a stock issue it would be impossible for a utility seeking Commission approval to present the Commission with a complete program of financing, since the terms of sale would not be known until after the bidding had been completed, p. 56.

Procedure, § 29 — Commission — Disposal of issues — Right of utility to final determination.

Statement that there is no reason why a public administrative body charged with certain regulatory powers should cloak in mystery whether or not its action on a given matter is final or not, where a utility would have to know such fact to proceed properly and promptly under the law, p. 58.

Parties, § 18 — Proceeding involving corporation — Right of stockholders to intervene.

Statement that a stockholder of a corporation ordinarily would not be allowed to intervene in a proceeding involving the corporation, on the theory that the corporate management would be expected to do the things necessary to protect the stockholders' interests, p. 59.

APPEARANCES: Nixon, Middleton, Hargrave & Devans, of Rochester (T. Carl Nixon and Earl L. Dey, both of Rochester, and Edmund B. Naylon and George Foster, Jr., both of New York city, of counsel), for petitioner; Philip Halpern, of Buffalo, counsel to Public Service Commission, for respondents; Shearman & Sterling & Wright, of New York city (Allen E. Throop, William W. Golub, and James B. Liberman, all of New York city, of counsel), for intervenor-petitioner.

BOOKSTEIN, J.: Petitioner is a public utility corporation. General Public Utilities Corporation, hereinafter referred to as "General," is the sole holder of all of the issued and outstanding common capital stock of the petitioner, and seeks to intervene in this proceeding. Petitioner has instituted this proceeding under Art 78 of the Civil Practice Act to review an alleged final determination of the respondents hereinafter referred to as the "Commission," and "General" seeks to intervene in that proceeding.

The "Commission" opposes the application of "General" to be permitted to intervene and moves to dismiss the proceeding on two grounds: First, that the determination sought to be reviewed is not final and that therefore this proceeding does not lie under § 1285, subdivision 3, of the Civil Practice Act; and second, that the petition does not state facts sufficient to entitle the petitioner to the relief sought.

[1] The matters thus raised will be disposed of in inverse order. For the purposes of the motion to dismiss for insufficiency, all of the allegations in the petition must be deemed to be true,

and, taken as true, the petition does state a cause of action. Therefore, the motion to dismiss for insufficiency must be denied.

The question of whether or not petitioner seeks to review a final determination presents a more difficult problem. By § 38 of the Stock Corporation Law it is provided that a corporation subject to the provisions of the Public Service Law shall not file such a certificate as is authorized by § 36 of the Stock Corporation Law, with respect to changes in its shares of capital stock or capital nor shall the secretary of state file such a certificate unless there is endorsed thereon the approval of the "Commission" having jurisdiction of such corporation. Thus, in this case, petitioner could not file such a certificate without such approval of the "Commission."

Under § 69 of the Public Service Law, a corporation such as petitioner may issue stocks, bonds, and other evidences of indebtedness payable at periods of more than twelve months after the date thereof when necessary for the acquisition of property, the construction, completion, extension, or improvement of its plant or distributing system, and for certain other purposes provided that there shall have been secured from the "Commission" an order authorizing such issue, and the amount thereof, and stating the purposes for which the issue or proceeds thereof are to be applied, and that, in the opinion of the "Commission," the money, property, or labor to be procured or paid for by the issue of such stocks, bonds, notes, or other evidences of indebtedness is or has been reasonably required for the purposes specified in the order.

Petitioner asserts that it finds itself in the position of having to raise capital for the purpose of refunding outstanding obligations at a lower rate of interest and for the acquisition and extension of additional plant and facilities in order adequately to serve the public within its orbit. In order to comply with § 69 of the Public Service Law and to obtain the endorsement required by § 38 of the Stock Corporation Law, petitioner filed its petition with the "Commission" setting forth the facts upon which it is claimed by it that it is entitled to the endorsement required by § 38 of the Stock Corporation Law and to a determination that it is entitled to issue the securities more fully described in its petition, consisting of new shares of capital stock and bonds, the proceeds of which are to provide for urgently needed construction and the redemption of outstanding bonds.

This petition was filed with the "Commission" on February 20, 1947. The ultimate relief asked by the petitioner in the petition filed with the "Commission," as shown by the prayer for relief in said petition, is the endorsed approval and consent of the "Commission" on its proposed certificate of authorization of new shares of common stock and the authorization of the "Commission" to issue and sell $16,677,000 aggregate principal amount of first mortgage bonds; 50,000 shares of preferred stock, series G., of the aggregate par value of $5,000,000 and 75,000 shares of common stock without par value, or such lesser number of shares of common stock as shall be necessary to realize $2,000,000 to the petitioner. Part of the proceeds of the proposed financing is to

be used to refund $7,657,000 of the principal amount of bonds outstanding. The balance of the proceeds is to be used to defray the cost of new construction, etc.

Since the petitioner is a subsidiary of "General" which is a registered holding company, petitioner was required to resort to competitive bidding for the securities proposed to be issued by it by reason of the provisions of the Public Utility Holding Company Act of 1935, 15 USCA § 79 et seq., and Rule U–50 promulgated thereunder by the Securities and Exchange Commission, although it appears that in some circumstances the Securities and Exchange Commission may waive the requirement for public bidding. Thus, before petitioner can issue its securities, it must have the approval of the "Commission" and also that of the United States Securities and Exchange Commission. It appears that before the Securities and Exchange Commission will authorize the issuance of securities, it must have some reasonable assurance that the proposed issue will have the approval of the "Commission," required by § 69 of the Public Service Law.

It seems to be recognized that prior to the enactment of the Public Utility Holding Company Act of 1935, and Rule U–50 promulgated thereunder, the practice was for a utility company, such as petitioner, to make a private arrangement for the sale of its securities to underwriters or a syndicate. Under that practice, it was simple matter for a utility company to make an arrangement with the underwriters, agreeable to both parties, subject to the approval of the "Commission," and the utility company could then present to the "Commission" a program of financing, complete in every detail, for approval or disapproval.

Under the competitive bidding system this is impossible, since the utility company cannot know the precise terms on which its securities are to be sold until after the competitive bidding has been completed. The utility company is confronted with the problem of going to the expense and trouble of submitting its proposed securities for sale at public bidding and such sale would have to be made subject to approval by the "Commission." Only in that way can a final complete financial plan be presented to the "Commission" in a petition for the approval required by § 69 of the Public Service Law. Although this condition has arisen since the enactment of the Public Utility Holding Company Act, no legislation has been enacted establishing a more flexible method for simultaneous compliance with § 69 of the Public Service Law and the Public Utility Holding Company Act, or, for that matter, is it at all certain that any legislation could be enacted without relaxing that degree of control over utility corporations which the state has found necessary and desirable.

In part, at least, to meet this situation, the "Commission" devised a practice known as "Advisory Resolutions" under which a utility company presented its petition for the approval required by § 69 of the Public Service Law, with the financial plan presented in as complete a form as is humanly possible without an actual prior private sale thereof and without actual prior public bidding therefor. By that procedure the "Commission" in the pro-

ceeding passes what is called a so-called "Advisory Resolution" either approving the proposed financing or making suggestions for changes in the proposed plan, which resolutions are regarded as morally binding on the "Commission" to issue a final order or authorization pursuant to § 69 in accordance with the "Advisory Resolution."

Apparently, the public utility corporations have recognized the existence of the device worked out by the "Commission," a device dictated by necessity, and of undoubted wisdom. The existence of such procedure was recognized by the petitioner which in its petition stated that *assuming* that the "Commission" should adopt an appropriate resolution, the petitioner proposes to issue an invitation for the submission of competitive bids for the purchase of its bonds and thereafter for the sale of 50,000 shares of preferred stock and thereafter for the sale of additional common stock to "General" at the price of $2,000,000 to petitioner and that if "General" refuses to purchase the shares of common stock, then petitioner, on the assumption that the "Commission" will adopt an appropriate resolution, proposed to sell the smallest number of shares of common stock necessary to realize $2,000,000 by issuing invitations for submission of competitive bids.

The proposed financing was as full and complete as it could be made without an actual bid, at either public or private sale; as to the bonds, it fixed minimum and maximum interest rates and minimum and maximum selling prices; as to the preferred stock, it fixed minimum and maximum selling prices and minimum and maximum dividend rates; as to the common stock, it provided that if "General" purchased it could have 60,000 shares for $2,000,000. If the sale of the common stock was the result of competitive bidding, the total price was to be $2,000,000 and the competition would be as to the number of shares of common stock to be acquired for that sum, not exceeding 75,000 shares. Except for a very narrow compass therefore, a complete financial plan was presented from which it could at least be determined fairly accurately what would be the minimum and maximum cost of the money to be obtained by the petitioner.

The "Commission" held hearings and as a result passed several so-called advisory resolutions making suggestions for the imposition of certain conditions, before the "Commission" would give its approval of petitioner's requested security issues. Although these recommendations were not to the liking of the petitioner, it agreed thereto without prejudice to its contention that they were not warranted and requested that its original petition be deemed amended accordingly.

Finally, on June 3, 1947, the "Commission" passed a resolution imposing additional conditions, to the giving of its approval, under § 69 of the Public Service Law to which the petitioner violently objected. It refused to accept the conditions and accordingly, on June 18, 1947, filed with the "Commission" a petition withdrawing its earlier acceptance of proposed conditions, suggested by the "Commission," standing on its original petition and prayer for relief, asserting that the resolution of June 3, 1947, was, according to its understanding, not an "advisory resolution" but a final de-

termination and if the "Commission" also regarded it as a final determination, asked for a rehearing.

On July 10, 1947, the "Commission" denied petitioner's petition of June 18, 1947, and "stood pat" on the record without giving any indication other than by its action as to whether or not it regarded its resolution of June 3, 1947 as a final determination or not.

[2] It now claims that this proceeding is premature on the ground that the action of June 3, 1947, did not constitute a final determination but only an advisory resolution. It takes the position that when the petitioner in its petition filed June 18, 1947, asked the "Commission' whether its action of June 3, 1947, was final or not that, in effect, petitioner was asking for a declaratory judgment on the part of the "Commission" itself, as to whether its action was final or not. Even assuming that to be so, there is no reason why a public administrative body charged with certain regulatory powers over the petitioner should cloak in mystery whether or not its action is final or otherwise, in a matter of such importance. Petitioner was entitled to know, at least, whether the "Commission" so regarded it so that it might proceed properly and promptly according to law. Except possibly for nomenclature, the action of the "Commission" of June 3, 1947, and July 10, 1947, has every element of finality. The petitioner in accordance with law and the practice before the "Commission" applied for certain definite authorization and approval. It was entitled to a determination granting or denying the same. The fact that, in the process of considering the application, the petitioner and the "Commission" negotiated on advisory matters did not deprive petitioner of the right to an ultimate determination. If the parties could agree on the matters concerning which the "Commission" gave its advice, then the matter would be disposed of by voluntary agreement. If they could not agree on these matters of advice given by the "Commission," then the "Commission" could exercise its quasi-judicial function and make its determination on the basis of the petition presented, with its advice rejected.

[3] When the "Commission" on June 3, 1947, passed a resolution authorizing petitioner to proceed to the competitive bidding, on the basis of the plant outlined in its petition, as amended in conformity with earlier advisory resolutions, which petitioner reluctantly accepted and, in such resolution, imposed the conditions not contained in the petition, and in the earlier advisory resolutions, it was, in effect, a final determination that the "Commission" would approve and grant the relief sought by the petitioner under the conditions imposed by its resolution of June 3, 1947, and on those conditions only. Obviously, this meant that if those conditions were not complied with, then the application of the petitioner was denied. Such a resolution had every element of a final determination.

[4] More especially is it true, when after the adoption of such resolution, the petitioner advised it would not comply with the conditions thus imposed and asked the "Commission" that if such determination was final, a rehearing be granted and such application was denied. It can hardly be

doubted that there has been a determination of such finality in character as to entitle this petitioner to maintain the present proceeding. It seems to this court that to hold otherwise would be sacrificing substance for form.

[5] It should be borne in mind that § 1285, subdivision 3, does not require that a determination to be reviewed must take any particular form, such as an order. What is authorized to be reviewed, is a *determination,* provided the determination is final.

Petitioner sought certain definite relief. In effect, the "Commission" determined that it would grant the relief, provided petitioner complied with certain conditions, with which it refuses to comply. Under such circumstances, it has received a final determination denying the relief sought by it, whatever name may be given to such determination, be it resolution, advisory resolution, or what not.

[6] With reference to the petition of "General" for intervention, it seems to this court that there are special reasons why the discretion of the court should be exercised in favor of granting the application. While it may be true that normally the stockholder of a corporation should not be allowed to intervene in a proceeding on the theory that the corporate management would do the things necessary to protect the stockholders' interests, it should be borne in mind that, in this case, "General" is the sole common stockholder of the petitioner; that beyond that "General," as a public utility holding corporation, is itself accountable to a large number of stockholders whose dividends are dependent in part at least on the dividends which "General" may receive on its common stock of the petitioner. The conditions sought to be imposed by the "Commission" if proper and lawful, would have a far-reaching effect on "General" and its receipt of dividends and so consequently on its ultimate payment of dividends to its stockholders. Under such circumstances, "General" has such a special interest in this litigation as, in the sound exercise of discretion, ought to permit it to intervene and its application is accordingly granted.

Motion of "General" to intervene is granted; motion of respondents to dismission petition is denied; respondents are to file and serve answer within one week, after service of a copy of the order to be entered hereon, together with notice of entry thereof; and this proceeding is thereupon to be transferred to the appellate division, third judicial department.

Submit order or orders accordingly.

WISCONSIN PUBLIC SERVICE COMMISSION

Re City of Milwaukee

2-U-2329
September 27, 1947

REHEARING *with respect to Commission order directing municipal plant to refrain from discontinuing water service to residence; affirmed. For earlier decision, see (1947) 69 PUR NS 62.*

Municipal plants, § 11 — Powers of Commission — Service outside city.

1. The Commission has authority to direct a city to refrain from discontinuing municipal plant service to a water consumer in a town outside the city limits, even though the city may not be operating in the town under an indeterminate permit granted by the town, p. 61.

Service, § 223 — Right to discontinue on notice — Contract limiting obligation.

2. A clause in a service contract between a utility and a customer which would permit the utility to terminate service at any time merely by giving the consumer thirty days' notice of its intention so to do constitutes an invalid limitation on the utility's obligation of service, p. 61.

Service, § 157 — Contract for temporary period — Definiteness.

3. A contract for temporary water service must have a definite and specified time as to the termination of the utility's obligation, p. 62.

Service, § 359.1 — Municipal water utility — Out-of-city residence.

4. The obligation of a municipally owned water utility to serve a residence outside the city limits is no different from its obligation to serve residences within its limits when, having power to do so, it commenced serving the out-of-city residences, p. 62.

Service, § 126 — Obligation of service — Municipally owned utility — Out-of-city residents.

5. The statute requiring utilities to furnish reasonably adequate service and facilities may be invoked for the protection of customers of a municipally owned utility, whether they reside inside or outside the city limits, p. 62.

Franchises, § 61 — Indeterminate permits — Municipal plant operation.

Discussion of the question whether a city supplying utility service in a town operates under an indeterminate permit, arising from a direct grant of authority by the state, where a town cannot grant such a permit, p. 61.

Service, § 121 — Contract limitation — Temporary service.

Statement that a utility may limit its undertaking of service in such a way that a particular service may be given for a specific period when such service is intended by both utility and customer to be temporary in character, so that upon the expiration of the temporary period it is without further obligation to the subscriber because of the mere fact that the temporary service had been given, p. 62.

RE CITY OF MILWAUKEE

Service, § 31 — Contract limiting obligation — Commission authority to approve.
Statement that the authority of the Commission to validate a contract limiting a utility's obligation of service has not definitely been determined, p. 62.

By the COMMISSION: Under date of May 29, 1947, 69 PUR NS 62, this Commission issued an order in the above-entitled matter directing the city of Milwaukee to refrain from the threatened discontinuance of the city's water utility service to the premises of John A. Cienian located at 3553 South 11th street in the town of Lake, Milwaukee county. Rehearing with respect to the matters determined by said order was granted upon request of the city of Milwaukee and consisted of oral argument presented before all of the members of the Commission on September 10, 1947, at Madison.

APPEARANCES: Joseph L. Bednarek, Assistant City Attorney, for city of Milwaukee; David G. Owen, Jr., Attorney, Milwaukee, for John A. Cienian; H. T. Ferguson, Chief Counsel, of the Commission staff.

[1] The chief contention of the city of Milwaukee, as presented in the argument on its behalf, is that the order of May 29, 1947, *supra,* in this proceeding is invalid because the Commission had no jurisdiction to make it. The argument as presented is not convincing. We cannot subscribe to the contention as made that the service of a utility is utility service and thus subject to the regulatory authority vested in this Commission only in those cases where the utility is operating under an indeterminate permit. Even if that proposition were sound it appears probable, to say the least, that the city of Milwaukee is operating in the town of Lake under an indeterminate permit. True, that town, under the decision of our supreme court, lacks the power or authority to grant the kind of license, permit, or franchise which constitutes an indeterminate permit; but the legislature of this state has granted to the city of Milwaukee both the power and the right to operate in the town of Lake. (Section 66.06 (12), Statutes.) Clearly, indeterminate permits may arise from direct grant by the state as well as through the action of the municipality as the agent of the state in that respect. (Section 196.01(5), Statutes.) No doubt remains in our minds as to the jurisdiction of the Commission to make the order of May 29th, *supra.*

[2] Our only doubt as to validity of that order arises over a different question upon which we do not have the benefit of argument by counsel. So far as the record shows, the city of Milwaukee was not under any obligation of service to the owner or occupant of the premises now occupied by Cienian at the time that service was instituted; and such service was instituted pursuant to a contract between the city and the then owner of the premises which provided, among other things, that the city could discontinue the service thus instituted at any time that it saw fit upon giving notice thereof to the owner of the premises. It was such a notice by the city of its intention to discontinue such service that precipitated this proceeding.

The question thus presented is whether such a provision in a contract between a utility and its customer or consumer has validity. Did this provision, in other words, constitute a valid

limitation upon the undertaking of service which was created by the rendition of service pursuant to the contract?

So far as we can discover this precise question is one of first impression here. We have been unable to find court or Commission precedent upon the question one way or the other. We must, therefore, determine for ourselves the law for our guidance in this case.

It seems to us that it is clearly competent for a utility to limit its undertaking of service in such a way that a particular service may be given for a specific period, when such service is intended by both the utility and the customer to be temporary in character; and that upon the expiration of the temporary obligation of service as specifically limited the utility would be without further obligation or undertaking of service because of the mere fact that such temporary service had been given.

[3] On the other hand, we think that any such temporary service of a utility must have a definite and specified time as to the termination of both the service involved and the obligation or duty to continue it. In other words, we think that any limitation of the obligation of service of the utility as specified in a contract providing for that service, which (as in this case) purports to undertake service for an indefinite time and which after a dozen years or more may be terminated at the whim or caprice of the utility, constitutes an invalid limitation upon the obligation of service of such utility. Whether the Commission can validate a limitation of obligation to serve by approving a limiting contract for service is not wholly clear. In this case no such approval was asked or given.

While the precise questions as just discussed were not before the supreme court of this state in either Northern States Power Co. v. Public Service Commission (1944) 246 Wis 215, 58 PUR NS 377, 16 NW2d 790, or in Milwaukee v. Railroad Commission (1935) 217 Wis 606, 11 PUR NS 316, 258 NW 854, those cases, and particularly the Milwaukee Case, seem to indicate a view of that court which is wholly out of harmony with any contention either that a public utility of this state, whether privately or municipally owned, may validly make such a limitation upon its obligation or undertaking of service as the city of Milwaukee purported to make by the provision in its contract with the then owner of Cienian's premises.

[4, 5] The city of Milwaukee contends that its service to customers outside the city boundaries is so related to the amount of surplus water which the city had available at the time of instituting such outside service that if the time occurs when that surplus has ceased to exist, the city may then discontinue service to such outside customers when, as, and if it sees fit and without approval or authority in that respect by regulatory authority. The city apparently rests this contention upon the use of the term "surplus water" in the opinion of the supreme court of this state in the case of Milwaukee v. Public Service Commission (1942) 241 Wis 249, 46 PUR NS 287, 5 NW2d 800. The decision in that case certainly did not establish, as the law of this state, the proposition as urged by the city of Milwaukee and as just above stated. We do not believe it is the law of this state. Doubtless, any municipally owned wa-

ter utility is under no obligation in the first instance to furnish service beyond the boundaries of the owner municipality unless it sees fit to do so. But having power to do so (as the city of Milwaukee has) and having done so, then, in our view, there is no distinction—so far as obligation of service is concerned—between customers inside the municipality and outside the municipality. In other words, the statute of this state, which requires utilities to furnish reasonably adequate service and facilities, applies to municipally owned utilities just as much as it does to privately owned utilities. That statute, as we view it, may be invoked for the protection of customers of the municipally owned utility both inside and outside the municipality; and customers outside of the municipality are as much entitled to its protection as those who are within such municipality; and to its protection equally and without discrimination.

It is our conclusion, therefore, that our order of May 29, 1947, *supra,* should be affirmed.

ORDER

It is therefore *ordered:* That our order of May 29, 1947, *supra,* in the above-entitled proceeding, be and is hereby affirmed.

NEW YORK SUPREME COURT, SPECIAL TERM, NEW YORK COUNTY, PART I

Robert Whyte

v.

New York Telephone Company

— Misc —, 73 NYS2d 138
August 28, 1947

APPLICATION *by subscriber for order directing telephone company to restore service; granted.*

Service, § 134 — Telephone — Denial for gambling.

1. A telephone company has sole authority to determine whether or not service should be discontinued to a subscriber whose telephone has been used for gambling purposes, and neither the police commissioner nor the police department is given any authority by statute to require a company to withhold or discontinue service, p. 64.

Service, § 134 — Telephone — Denial for gambling — Arbitrary action at police request.

2. A telephone company will be directed to resume service to a subscriber whom it has served for many years where the company has discontinued service unjustifiably at the request of the police department, p. 64.

Service, § 134 — Telephone — Denial for gambling — Arbitrary action at police request.

3. The action of a telephone company in discontinuing service at the request of the police department is arbitrary and unjustified where the only

unlawful use alleged is that of an employee who was arrested for bookmaking over the telephone and where there is no evidence that the telephone was used for this purpose with the subscriber's knowledge or that the unlawful use would be likely to reoccur in the future, p. 64.

Service, § 489 — Peremptory order to continue — Right to relief.

Statement that a peremptory order requiring a telephone company to resume service will not be issued unless a clear right to the relief is demonstrated, p. 64.

APPEARANCES: Nathaniel Feinstein, of New York city, for petitioner; Ralph W. Brown, of New York city, for respondent.

DICKSTEIN, J.: An order is sought directing restoration of telephone service and equipment heretofore furnished petitioner at his place of business. Petitioner is engaged in the business of manufacturing custom-built shoes. For the past twenty years he has had in his place of business a telephone and one extension. Service was interrupted when members of the police department entered petitioner's place of business on July 15, 1947, and arrested one Robert Campbell, an employee of petitioner, for violation of § 986, Penal Law (Bookmaking). On July 25, 1947, the respondent Telephone Company terminated telephone service at the request of the police department.

[1] In Shillitani v. Valentine (1947) 296 NY 161, 164, 67 PUR NS 150, 151, 71 NE2d 450, 451, the court said: "Neither the police commissioner nor the police department is given any authority by statute to pass upon or regulate applications for telephone service, or to require a telephone company to withhold or discontinue its service. . . . Whether or no service should be terminated or discontinued is a decision that must be made by the telephone company. . . . True, the company is free to consult with the police department or with any other law enforcement agency, and may be guided in its action by the advice received. But whether the action is justified or warranted must be determined by the telephone company upon the facts presented."

[2, 3] A peremptory order may not issue here unless petitioner has a clear legal right to relief. Leitner v. New York Teleph. Co. (1938) 277 NY 180, 24 PUR NS 289, 13 NE2d 763. This petitioner has demonstrated in the present proceeding. The undisputed facts establish that petitioner was not using or permitting his telephone to be used for unlawful activities in violation of the Penal Law. No act on the part of the petitioner has been assailed, and continuous uninterrupted service for forty years should not be terminated because of an isolated, unauthorized act of an employee. The guilt or innocence of the employee is immaterial at this juncture, although disposition of his case has not yet been made. There is no reasonable basis to suppose that any future repetition of such an act will occur. Consequently the record before the court leaves no other conclusion than that the action of respondent was arbitrary and unjustified. The application is granted. Settle order.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

$280,000,000 Program Planned By Consolidated Edison of N. Y.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., announced recently an upward revision of its budget for construction and expansion during the next four years, resulting from high costs of materials and construction and from increased needs for electric service.

Ralph H. Tapscott, president, said that the company now plans to spend $280,000,000 during the next four years. This is in contrast to an earlier announcement that a five-year postwar construction program would cost about $250,000,000.

The major part of the four-year construction program outlined by Mr. Tapscott involves an expansion of the company's electric generation and distribution system. It includes equipment to increase Consolidated Edison System's net normal production capacity from the present 2,556,000 kilowatts to 3,000,000 kilowatts at the end of the period. Substation, transmission, and distribution facilities must be increased in view of the larger loads to be served, according to Mr. Tapscott, and are included in the program. He estimated that more than $40,000,000 would be spent during each of the four years included in the program for these new electric production and distribution facilities.

Enlargement of the company's Waterside electric generating station is approaching completion, and it is expected that three turbogenerators with a total capacity of 170,000 kilowatts will be in service there by the end of 1948, Mr. Tapscott said. A fourth unit of 50,000 kilowatts capacity is scheduled for installation in 1949.

Mr. Tapscott said the company's East River generating station is to be enlarged at a cost of $36,000,000. Two generating units, each with a capacity of 120,000 kilowatts, are to be added.

Opportunity Offered to Design Own Car

THOUSANDS of automobile owners will be given a chance to "design their own car" through a four-color illustrated questionnaire to be distributed across the country by the Ford Motor Company.

Developed by the Ford Marketing Research Department, the questionnaire gives a choice of automobile size, body style, engine, interior decoration, chrome trim, accessories, and "extras"—all with price tags. From these automobile owners can select the features they would like in their new model car and tally up the approximate cost.

San Diego Gas & Elec. Plans $40,000,000 Expansion

THE SAN DIEGO GAS & ELECTRIC COMPANY has announced a $40,000,000 expansion program to be undertaken between now and 1952.

Included are two projects announced for the first time. One is a $5,000,000 gas line to connect with a northern source with which negotiations are in progress. The other is a 50,000 kw. station to be installed in 1950 at a cost of $7,500,000.

The company is building a 50,000 kw. turbo generator at present at its Silvergate plant and also previously announced new transmission lines and other improvements.

The company reported 16,000 new customers since the end of the war and the sale of electrical appliances locally at a rate much higher than prewar.

Connectors for Grounding

"CONNECTORS FOR GROUNDING" is the title of catalog G 47, published by Burndy Engineering Company, New York city 54.

The 32-page catalog presents the company's broad line of grounding devices which are widely used wherever ground systems are in operation. In addition, the Burndy publication provides a comprehensive discussion of modern grounding practice heretofore not available between the covers of one publication.

A copy may be had by writing Burndy.

New Appointments

Allis-Chalmers

R. O. Bell has been promoted from assistant engineer-in-charge to engineer-in-charge of transformer sales of the Allis-Chalmers electrical department, according to an announcement by G. W. Clothier, manager of the company's transformer section.

Gar Wood Industries, Inc.

W. H. Hammond, vice president-sales of Gar Wood Industries, Inc., announces the appointment of E. B. Hill as general sales manager and R. F. Whitworth, general service manager and the creation of four domestic regional sales offices under Mr. Hill.

Construction Loans Announced

CONSTRUCTION loans — chiefly for distribution lines, system improvements or new or additional generating capacity—recently were made to the following enterprises by the Rural Electrification Administration:

Graham County Electric Coöperative, Pima, Ariz., $222,000.

Buchanan County Rural Electric Coöperative, Independence, Iowa, $320,000.

Top O'Michigan Rural Electric Company, Boyne City, Mich., $245,000.

Todd-Wadena Power and Light Coöperative Association, Wadena, Minn., $255,000.

Washington Island Electric Coöperative, Washington Island, Wis., $20,000.

Duncan Valley Electric Coöperative, Inc., Duncan, Arizona, $430,000.

Withlacoochee River Electric Coöperative, Inc., Dade City, Florida, $300,000.

Victory Electric Coöperative, Inc., Dodge City, Kansas, $272,000.

Northwest Electric Coöperative Association, Inc., Bird City, Kansas, $310,000.

Missouri Rural Electric Coöperative Association, Palmyra, Missouri, $173,000.

White River Valley Electric Coöperative, Inc., Hollister, Missouri, $404,000.

Continental Divide Electric Coöperative, Inc., Gallup, New Mexico, $280,000.

Tuscarwas-Coshocton Electric Coöperative, Inc., Coshocton, Ohio, $115,000.

Edisto Electric Coöperative, Inc., Bamberg, South Carolina, $550,000.

Erath County Electric Coöperative Association, Stephenville, Texas, $390,000.

Dixie Rural Electric Association, St. George, Utah, $20,000.

Riceland Electric Coöperative, Stuttgart, Ark., $180,000.

Howell-Oregon Electric Coöperative, West Plains, Mo., $535,000.

Lamb County Electric Coöperative, Littlefield, Tex., $210,000.

Deep East Texas Electric Coöperative, San Augustine, Tex., $350,000.

Northern Piedmont Electric Coöperative, Culpepper, Va., $190,000.

Delta-Montrose Rural Power Lines Association, Delta, Colo., $256,000.

Ark Valley Electric Coöperative Association, Hutchinson, Kans., $140,000.

Northwestern Electric Coöperative, Woodward, Okla., $900,000.

Grayson-Collin Electric Coöperative, Van Alstyne, Tex., $170,000.

Wharton County Electric Coöperative, El Campo, Tex., $70,000.

Greenbelt Electric Coöperative, Wellington, Tex., $428,000.

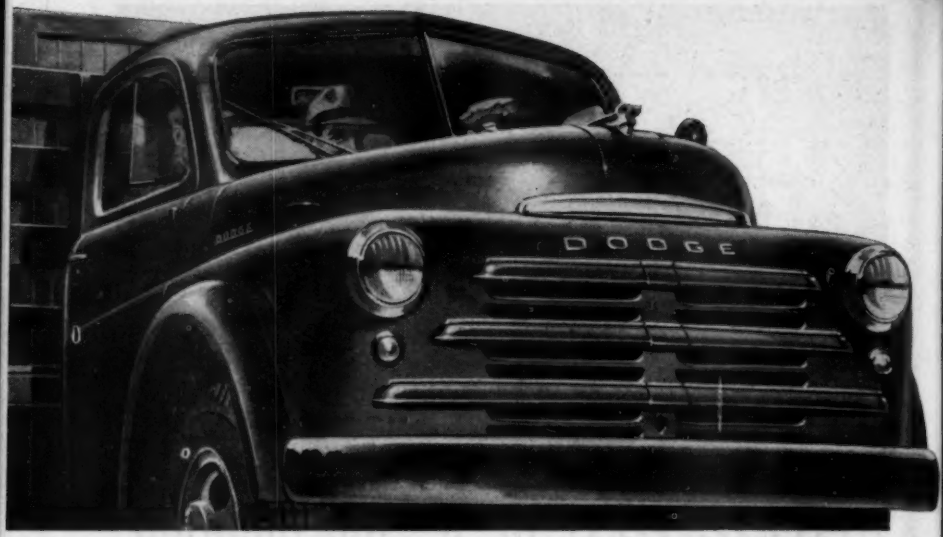
Itasca-Mantrap Coöperative Electric Association, Park Rapids, Minn., $390,000.

Hill County Electric Coöperative, Havre, Mont., $420,000.

Woodstock Electric Membership Corporation, Bellhaven, N. C., $60,000.

Cotton Electric Coöperative, Walters, Okla., $455,000.

NEW TRUCKS



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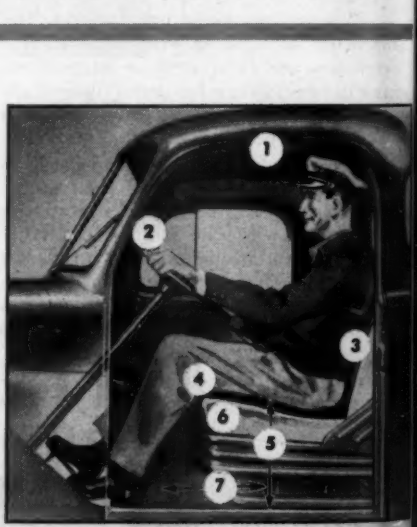

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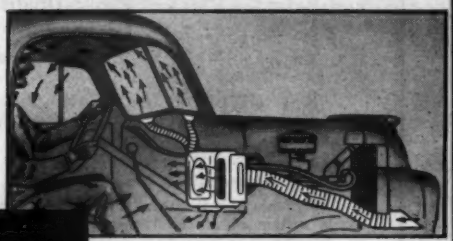

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